

(2018) 08 CHH CK 0129
Chhattisgarh High Court
Case No: First Appeal No. 725 Of 2000

Sakuntala Devi And Ors

APPELLANT

Vs

Sanjay Agrawal

RESPONDENT

Date of Decision: Aug. 9, 2018

Acts Referred:

- Code Of Civil Procedure 1908 - Section 96

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: B.D. Guru, Indira Tripathi

Final Decision: Dismissed

Judgement

Ram Prasanna Sharma, J

1. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment and decree dated 12-11- 1999 passed by the

Second Additional District Judge, Raipur (CG) in Civil Suit No. 27-A/98 whereby the said court dismissed the suit filed by the appellant for declaration

of title over the house bearing No. 479/3, situated at village Saraipali and for recovery of possession of the said house from the respondent.

2. As per the case of the appellant, the house in question was acquired by him by way of partition as property is ancestral property. The said house

was rented to father of the respondent in the year 1984 who left the village Saraipali in the year 1989 and thereafter the respondent is in possession of

the said house. In a proceeding of eviction before the Sub Divisional Officer (Revenue), Saraipali, father of the respondent admitted that he is a tenant

in the said premise. Again, the suit was filed against the respondent for eviction before the court of Civil Judge which is registered as Civil Suit No.

122-A/91, but was dismissed by the said court and the appeal filed against the said judgment/decreed is also dismissed. As the Civil Court did not

declare the appellant as owner of the property, that is why he filed the suit before the trial Court, but that was dismissed after hearing both parties.

3. Learned counsel for the appellant submits as under:

i) Document Ex.P/1 is showing family arrangement by which the house in question was partitioned in favour of the appellant, but the trial court did not

appreciate the said document in its true perspective.

ii) The trial court erred in holding that the document (Ex.P/1) requires registration. The trial Court ought to have appreciated that the document

(Ex.P/1) is an old document which was produced from proper custody and same can be acted upon.

iii) The finding of the trial court that a person in possession should be deemed to be title holder is erroneous.

iv) The trial court failed to appreciate the Municipal records showing that the appellant is tax payee of the said house which proves his title.

4. On the other hand, learned counsel for the respondent would submit that the finding arrived at by the trial Court is based on proper appreciation of

oral and documentary evidence adduced by the parties which is not liable to be interfered with by this court.

5. The first question for consideration of this court is whether the appellant is title holder of the house in question. No record of right was produced

before the trial Court on which land the house is constructed. No survey number of the said land and area are mentioned in the plaint.

6. From the evidence, it is not clear whether the house is constructed by the ancestor of the appellant or by the appellant or whether the constructed

house is purchased by them. Case of the appellant is based on document (Ex.P/1) which is unregistered document of partition. In the said document it

is not clear as to how many members were share holders of the property and particulars of entire property of joint family which is partitioned. It is also

not clear as to which property is allotted to which shareholder and particulars of the said property are also not mentioned in the said document. It is

settled law that any partition all the property should be kept for partition in presence of share-holders and in partition deed description must be given as

to which property is allotted to which shareholder, but the document is silent on all the points. The document filed by the appellant as document of

partition which is Ex.P/1 is a private document one can purchase stamp for the same and make the statement of partition in the said stamp. In

absence of record of right regarding whole property of the persons who are shareholders of the property, such private document of partition does not

confer any title over any property, therefore, the document (Ex.P/1) is not a document of acquiring title. Title can be acquired by operation of law by

way of inheritance or it can be acquired by the derived title i.e., acquiring property through sale deed, gift deed and other mode of transfer of property.

In absence of record of right of ancestor, it cannot be held that the property is inherited by the appellant. It is not a case of the appellant that he

acquired property by the derived title, therefore, the argument advanced on behalf of the appellant is not sustainable that the document (Ex.P1) is a

document of acquiring title.

7. True it is that the documents (Ex.P/2 to P/5) are related to municipal tax in which it is mentioned that the appellant paid the tax, but from these

documents it is not established that same is issued against the house in question. These documents are related to payment of tax and it cannot be

termed as document of title and such documents do not confer any title over the suit house, therefore, the argument advanced on behalf of the

appellant that the title of the appellant can be assumed by record of payment of tax is without substance.

8. It is admitted between the parties that a civil suit was instituted by the appellant against the respondent for eviction from the house in question in

relation to tenant and landlord which was registered as Civil Suit No. 112-A/91 in which it is held that there is no relationship between the parties as

tenant and landlord and ownership of the appellant is not proved. The appeal filed against the said decree before the Additional District Judge,

Mahasamund which is registered as Civil Appeal No. 6-A/94 was also dismissed on 30-7-1996. When it is established that there is no relation between

the parties as tenant and landlord, then respondent who is in possession of the suit house can be evicted only upon proving title of the said suit house

by the appellant. In the present case, title is not proved and therefore, the trial Court is right in not awarding decree in favour of the appellant.

9. Considering all the facts and the material available on record, this court is of the view that the finding arrived at by the trial Court is based on proper

marshalling of evidence and the same is not liable to be interfered while invoking jurisdiction of this appeal.

10. Accordingly, the decree is passed against the appellants and in favour of respondent on the following terms and conditions.

i) The appeal is dismissed with cost.

ii) Appellant to bear the cost of the respondent.

iii) Counsel fee, if certified be calculated as per certificate or as per Schedule whichever is less.

iv) A decree be drawn accordingly.