
(2018) 07 CHH CK 0236
Chhattisgarh High Court
Case No: FA No. 170 Of 2018

Bahura Ram

APPELLANT

Vs

Musammat Janki And Ors

RESPONDENT

Date of Decision: July 19, 2018

Acts Referred:

- Code Of Civil Procedure 1908 - Section 96, Order 9 Rule 9
- Chhattisgarh Land Revenue Act, 1959 - Section 110

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: Vivek Tripathi, Anand Kesharwani, Sanjeev Pandey

Final Decision: Dismissed

Judgement

Ram Prasanna Sharma, J

1. The appellant has preferred this appeal under Section 96 of the Code of Civil Procedure, 1908 against the judgment and decree dated 23-1-2018

passed by the District Judge, Civil District, Jashpur (CG) in Civil Sit No. 9-A/2016 wherein the said Court dismissed the suit for declaration, possession

of the suit land bearing Khasra No. 11 survey numbers measuring 3.330 hectares as per Schedule-A of the plaint and again for declaring sale deed

dated 29-5-1997 void executed by Jatri Bai in favour of Jairam Bhagel.

2. The suit was filed on the ground that the appellant was one of the recorded owners amongst others but his name was deleted by Tahsildar vide

order dated 19-7-1997. The same land was sold by Jatri Bai in favour of Jairam and as the sale deed was executed without consideration and by

deceiving Jatri Baitha same is void ab initio. After recording the evidence of the parties and hearing, the trial Court dismissed the suit on the ground

that neither the appellant is title holder nor was in possession of the same land and the suit is filed beyond limitation.

3. As per record of right Ex.P/2 (B-1) of year 1997-98, Smt. Jatri Baio was the sole owner of the said land and sale deed was executed by her on 29-

5-1997. Ex.P/25 is the mutation proceeding under Section 110 of the Chhattisgarh Land Revenue Act, 1959 in which the appellant was party as

objector and the same is decided on 31- 12-1998 by Tahsildar, Jashpur, in which objection of the appellant was rejected and the land was ordered to

be mutated in the name of purchaser Jairam and Laluram. From the above proceeding of the revenue code, it is clear that the appellant was having

knowledge regarding sale deed executed by Jatri.

4. It is contended on behalf of the appellant that earlier he filed a suit for declaring the said sale deed void which was registered on 28-1- 2000 in the

Court of Civil Judge, Class I, Jashpur, but the same was dismissed, therefore, he again filed the suit for declaring the sale deed void on 19-9-2016

before the trial Court. On perusal of Ex.P/24, it appears that earlier suit was filed by the appellant was dismissed.

5. Now the point for consideration before this court is whether the suit can be filed again and again for same relief. Order 9 Rule 9 of the Code of

Civil Procedure 1908 is relevant which may be read as under:

Decree against plaintiff by default bars fresh suit - (1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from

bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that

there was sufficient cause for his non- appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal

upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit"".

6. As per legal provision, the suit cannot be filed for same relief when earlier suit is dismissed. Again, it is clear that the appellant was having

knowledge that sale deed was executed by Jatri Bai on 29- 5-1997 and the appellant participated in proceeding of mutation in which purchaser of the

land and Jatri Bai were parties and same was decided on 31-12-1998 as per Ex.P/25.

7. As per Article 59 of the Schedule of the Limitation Act, 1963, period of limitation is three years for setting aside an instrument and the period runs

when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him. As

per Ex.P/25, the appellant was having knowledge of sale deed in the year 1998. He filed a suit for declaring the said sale deed void in the year 2000,

but the same was dismissed on default and after lapse of 18 years, he again filed a suit for same relief which is apparently time barred and fresh suit

for same relief is also barred by law, which is not liable to be heard at length.

8. Accordingly, the appeal is liable to be and is hereby dismissed at motion stage itself.