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US-79/11

IN THE HIGH COURT OF JUDICATURE AT BILASPUR
CHHATTISGARH

S.A. NO. 85 /2005

APPELLANT : Milan Prasad S/o. Late Usatram Bhaina,
PLAINTIFF Caste Bhaina (Aadiwasi) Aged about 68 years,
Occupation- Agriculture, R/o. Village Tadola,
Tahsil & Distt. Raigarh (C.G.)

VERSUS

RESPONDENTS : 1] Labhau S/o. Jageshwar Gond,
DEFENDENTS Aged about 35 years, Occupation
Agriculture, R/o. Village Tadola, Tahsil
& Distt. Raigarh (C.G.)

P.R. No. 433/05
Presented by Shri. G. N. D. Sharma
dated 14.2.05

2] Sadhram S/o. Unknown, Caste Gond,
Aged about 50 years, Occupation
Agriculture, R/o. Village Sagitarai,
Tahsil & Distt. Raigarh (C.G.)

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3] Naib Tahsildar, Up Tahsil, Pusaur,
Tahsil & Distt. Raigarh (C.G.)

4] State of Chhattisgarh, Through: District
President, Raigarh (C.G.)

SECOND APPEAL UNDER SECTION 100 OF CIVIL
PROCEDURE CODE

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.A. No. 85/2005

Appellant

Milan Prasad

Versus

Respondents

Labhau & others

Shri Manoj Parajape, counsel for the appellant.

Shri J.D. Bajpai, G.A. for the respondents / State.

J U D G M E N T

(Passed on 31-03-2005)

Dhirendra Mishra J.

The appellant/plaintiff has preferred this appeal against the judgment and decree dated 26/11/2000 passed by District Judge, Raigarh in Civil Appeal No. 22-A/2004 whereby the judgment and decree passed by the trial Court dismissing the suit of the plaintiff for declaration of title and perpetual injunction in Civil Suit No. 98-A/97 has been confirmed.

The case of the plaintiff before the trial Court was that he purchased the suit land on 18/04/69 from Jageshwar, Radha Bai and Shanti Bai through a registered sale deed and since then after getting his name mutated, he was in peaceful possession till 1996 and when

the defendants forcibly tried to encroach upon his land by ploughing the same by tractor, the matter was reported to the police and thereafter the suit was filed by the plaintiff. Along with the suit an application for temporary injunction was also filed which was allowed by the trial Court but however, the order granting temporary injunction was set aside in appeal by the lower appellate Court.

Case of the defendant/respondent before the Court below was that the property in question was the ancestral property of Jageshwar. The plaintiff was never in possession of the suit property. Till 1995 the property was recorded in the name of defendant No.1 but however the appellant got his name mutated without notice to the defendants in the revenue papers and it was denied that the defendants illegally encroached upon the suit property. It was further submitted that the plaintiff moved an application before the Tahsildar for restoration of possession which was dismissed. On the basis of the pleadings of the respective parties, issues were framed by the trial Court and the evidence on behalf of the plaintiffs as well as the defendants was recorded.

The trial Court dismissed the suit recording a finding that the plaintiff has not been able to prove that by registered sale deed dated 18/04/69 he purchased the suit property from its owner namely, Jageshwar, Radha Bai and Shanti Bai and therefore claimed possession and title over the same. The trial Court also recorded a finding that the plaintiff has failed to prove that the defendants dispossessed the plaintiff on 28/06/96 and accordingly dismissed the suit with cost.

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The appeal preferred by the plaintiff / appellant was also dismissed by the appellate Court vide impugned judgment and decree dated 26/11/2004 recording a finding that the plaintiff has failed to prove that the sale deed was executed on 18/04/69 in his favour and that he was in possession from the date of purchase i.e. from 18/04/69 till 28/06/96.

Both the Courts below have recorded a concurrent finding of fact that the defendants are in possession of the suit property from the very beginning and the plaintiff was never in possession of the same. This finding is based on the reasoning that the original sale deed has not been produced by the plaintiff though the factum of execution of the sale deed has been denied by the respondents/defendants. No document to show that after execution of the sale deed the land in question was recorded in the name of the plaintiff has been filed by the plaintiff and on the contrary the plaintiff has admitted in his deposition that he applied for mutation for the first time in the year 1996 and witnesses examined by the plaintiff are not aware of the position of the suit land and therefore their submission that the plaintiff was in possession of the suit property has been disbelieved.

Thus, both the Courts below have recorded a concurrent finding that the plaintiff has failed to prove the execution of the sale deed and further that in pursuance of the said sale deed, the possession of the suit property was transferred to the plaintiff. The Courts below have further recorded a finding that the defendants are in possession of the suit property right from the beginning and thus, the suit has been dismissed.

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After hearing the counsel for the appellant and going through the material available on record this Court of the view that the judgment and decree passed by both the Courts below are based on objective analysis of the evidence and the material available on record and the same do not call for any interference by this Court in the Second Appeal inasmuch as no substantial question of law is involved for adjudication of this appeal.

In the result, the appeal being devoid of merit is liable to be dismissed and it is accordingly dismissed.

There shall be no orders as to cost.

M.C.P. No. 251/2005 and I.A. No. 452/2005 stand disposed of.

Sd/-
Dhirendra Mishra
Judge

Jyo