

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 18-7-2019

Delivered on 30-8-2019

FA No. 7 of 2009

- Municipal Corporation Raipur through Commissioner, Municipal Corporation. Raipur

---- Appellant/defendant

Versus

1. Shri Rajpal Singh S/o Laxman Singh R/o Telibandh, Ravigram Raipur Through General Power Of Attorney Harvinder Singh Nagpal S/o Hardayal Singh Nagpal, Telibandha, Raipur
2. Jagdish Singh S/o Darshan Singh R/o Telibandh, Ravigram Raipur Through General Power Of Attorney Harvinder Singh Nagpal S/o Hardayal Singh Nagpal, Telibandha, Raipur
3. Jasveer Singh S/o Surjeet Singh R/o Telibandh, Ravigram Raipur Through General Power Of Attorney Harvinder Singh Nagpal S/o Hardayal Singh Nagpal, Telibandha, Raipur
4. Gurjeet Singh S/o Prahlad Singh R/o Telibandh, Ravigram Raipur Through General Power Of Attorney Harvinder Singh Nagpal S/o Hardayal Singh Nagpal, Telibandha, Raipur
5. Kehar Singh S/o Sukhiram R/o Telibandh, Ravigram Raipur Through General Power Of Attorney Harvinder Singh Nagpal S/o Hardayal Singh Nagpal, Telibandha, Raipur
6. Tony S/o Amar Singh R/o Telibandh, Ravigram Raipur Through General Power Of Attorney Harvinder Singh Nagpal S/o Hardayal Singh Nagpal, Telibandha, Raipur
4. Kumar Chand S/o Sukhiram R/o Telibandh, Ravigram Raipur Through General Power Of Attorney Harvinder Singh Nagpal S/o Hardayal Singh Nagpal, Telibandha, Raipur

---- Respondents/plaintiffs

For appellant : Mr. H.B. Agrawal, Sr. Advocate with
Mr. Pankaj Agrawal, Advocate.

For respondents : Mr Manish Thakur, Mr. Sameer Oraon
and Mr. Chakresh Tiwari, Advocates.

SB: Hon'ble Shri Justice Ram Prasanna Sharma
CAV JUDGMENT

1. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 30-09-2008 passed by XIth Additional District Judge, Raipur (CG) in Civil Suit No. 23-A of 2006 wherein the said court decreed the suit filed by the respondents/plaintiffs for declaration of title and possession regarding plot Nos.81 area 1000 sq.ft., 72 area 100 sq.ft., 75 area 1000 sq.ft., 66 area 1000 sq.ft., 62 sq.ft., 69 area 1000 sq.ft and 63 area 1000 sq.ft., situated at Telibandha which are allotted to them in residential house scheme by the appellant/defendant.

2) As per the appellant, the land was sold to respondents/plaintiffs on 30-8-1988 and 9-2-1989 and suit was filed on 30-6-2003 for declaration of title and possession which is apparently time barred as per Articles 64 and 65 of the Limitation Act, 1963 and plaint ought to have been rejected under Order 7 Rule 11 of the CPC but the trial court decreed the suit contrary to factual matrix and legal aspect of the matter.

3. Learned counsel for the appellant submits as under.

- i) Suit was not filed by any of the purchasers of the land but it is filed by

the Power of Attorney namely Harvinder Singh Nagpal which is not maintainable.

- ii) As per evidence, possession was not delivered to any of the respondents, therefore, suit for declaration of title was to be filed within three years of such sale deed and suit for possession was to be filed within 12 years of the execution of sale deed, but that is not filed within 12 years and same is filed after 12 years, therefore, decree of the trial court is liable to be set aside.

4) On the other hand, learned counsel for the respondents/plaintiffs would submit that the issue of limitation has not been raised before the trial court, therefore, it cannot be raised in appeal for the first time. He would further submit that Power of Attorney was competent to file the suit and the respondents were examined before the trial court and deposed about possession and dispossession, therefore, finding of the trial court is not liable to be interfered with while invoking jurisdiction of the appeal. He placed reliance in the matter of **Rameshlal and others vs. M/s. National Stationery Mart and others (S.A.No.55 of 2001)** decided on 28-3-2014 decided by this court, **Jagdish Singh vs. Madhuri Devi**, reported in (2008) 10 SCC 497, **American Hotel and Lodging Association Educational Institute vs. Central Board of Direct**

Taxes and others, reported in (2008)10 SCC 509, Janki Vashdeo Bhojwani and another vs. Indusind Bank Ltd and others, reported in (2008) 2 SCC 217, Pallavi Refractories and others vs. Singareni Collieries Co. Ltd., and others, reported in (2008) 2 SCC 227, Man Kaur (dead) by LRs vs Hartar Singh Sangha (Civil Appeal Nos. 147-148 of 2001) decided by SC on 5-10-2010.

5) I have heard learned counsel for the parties and perused the record of court below including the judgment and decree.

6) The only question for consideration of this court is whether the appellant has constructed residential quarters for Government employees in all the lands for which sale deed was earlier executed in favour of respondents as mentioned above.

7) No one was examined on behalf of the appellant before the trial court for establishing that any construction is made by the appellant in the land of the respondents which is subject matter of the suit filed by the respondents. The issue is related to demarcation of the land, but no demarcation was conducted in the present case, therefore, there is no documentary evidence on record to show that construction is made by the appellant in the land in question. The issue of limitation can be decided only when the date of construction is established, but in the present case there is no evidence to establish on what date the construction was

made by the appellant. The finding ought to have been recorded by the trial court objectively on the point but finding of the trial court in this regard is subjective in nature regarding date of construction by the appellant. If construction is not raised in the land in question, the respondents are free to take possession of the land, but if any construction is raised then the trial court shall record objective finding regarding date of construction and decide the issues between the parties afresh. As the finding regarding construction by the appellant is not objective, the same is required to be considered by the trial court. The decree passed by the trial court is liable to be and is hereby set aside.

8) Accordingly, the matter is remanded back to the trial court and the trial court is directed to consider the issue of construction by the appellant objectively, record a specific finding and decide the matter afresh after providing opportunity of hearing to both sides to adduce evidence on this count.

9) Both parties shall appear before the trial court for further proceedings on 27-9-2019.

10) In view of the above, the appeal is partly allowed.

Sd/-

(Ram Prasanna Sharma)
JUDGE