



2026:CGHC:20929-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**FA No. 74 of 2024**

1 - M/s. Goyal Material Suppliers Through Its Proprietor Late Suresh Kumar Agrawal (Wrongly Written As Goyal) Son Of Ratan Lal Agrawal (Since Died Through Legal Representatives), (1). Shanti Bai Agrawal, W/o Late Suresh Kumar Agrawal (Goyal), Aged About 69, Resident Of 130 Ward No. 14, Near Shyam Mandir, Nevra, Tehsil Tilda, District Raipur, Chhattisgarh,...(Plaintiff)

2 - Anand Kumar Agrawal S/o Late Suresh Kumar Agrawal Aged About 46 Years Resident Of Ward No. 12, Near Shyam Mandir, Nevra, Tehsil Tilda, District Raipur, Chhattisgarh.

3 - Amit Agrawal S/o Late Suresh Kumar Agrawal Aged About 41 Years Resident Of Ward No. 12, Near Shyam Mandir, Nevra, Tehsil Tilda, District Raipur, Chhattisgarh.

--- **Appellants****Versus**

1 - Prahlad Dewangan S/o Shri Jhaliram Dewangan Post Office And Police Station Bemetara, Tehsil Tilda, District Raipur, Chhattisgarh,...(Defendant)

--- **Respondent(s)****FA No. 75 of 2024**

1 - M/s. Goyal Material Suppliers Through Its Proprietor Late Suresh Kumar Agrawal (Wrongly Written As Goyal) S/o Of Ratan Lal Agrawal (Since Died Through Legal Representatives) 1. Shanti Bai Agrawal (Goyal) Aged About 69 Years R/o Of 130 Ward No. 14, Near Shyam Mandir, Nerva, Tehsil Tilda, District Raipur Chhattisgarh.

2 - Anand Kumar Agrawal S/o Late Suresh Kumar Agrawal Aged About 46 Years R/o- Ward No. 12, Near Shyam Mandir, Nevra, Tehsil Tilda, District- Raipur, Chhattisgarh.

3 - Amit Agrawal S/o Late Suresh Kumar Agrawal Aged About 41 Years R/o Ward No. 12, Near Sham Mandir, Nevra, Tehsil Tilda, District- Raipur, Chhattisgarh.

---Appellants

Versus

1 - Prahlad Dewangan S/o Shri Jhaliram Dewangan, Post Office And Police Station Bemetara, Tehsil Tilda District- Raipur, Chhattisgarh.

--- Respondent(s)

(Cause-title taken from Case Information System)

For Appellants	:	Shri Manoj Paranjpe, Sr. Advocate along with Shri Pranjal Agrawal, Advocate.
For Respondent	:	Shri Malay Shrivastava, Shri Vedang Jangde and Shri Shahid Siddiqui, Advocates.

Hon'ble Shri Justice Ramesh Sinha, CJ

Hon'ble Shri Justice Ravindra Kumar Agrawal, J

Judgment on Board

05.05.2026

Per, Ramesh Sinha, CJ.

- Both these appeals were listed for consideration on the application filed under Order 39 Rule 1 & 2 of Code of Civil Procedure, 1908 (in short, CPC), however, considering the fact that these are admitted appeals and the parties were already noticed, with the consent of the parties, both the appeals are being heard and decided together by this common judgment as both the appeals arise out same civil suit and common judgment.
- FA No.74 of 2024 has been filed by the appellants against the judgment and decree dated 16.01.2024 passed by 3rd Additional District Judge, Raipur, in Civil Suit No.122-A/2014 whereby the suit filed by the plaintiffs/appellants for vacant possession, damages and

permanent injunction has been dismissed whereas, FA No.75 of 2024 has been filed by the appellants against the judgment and decree dated 16.01.2024 passed by 3rd Additional District Judge, Raipur, in Civil Suit No.122-A/2014 whereby the counter claim filed by the defendant was partly allowed and a decree for permanent injunction with respect to 4 dismil of land over which the house of defendant No.1 is situated, have been passed and plaintiffs were restrained from interfering with the peaceful possession of the defendant over the suit land.

- 3** The facts of the case are one and common which arose from common suit. The appellants were plaintiff before the trial court. They filed a suit for vacant possession, damages and permanent injunction over the suit land Khasra No.356/1 and 357/1 total area 0.324 Hect. (0.80 Acre) situated at village Sasaholi, PH No.7, RI Circle, Tilda, Tehsil Tilda, District Raipur including a hutment constructed over a small portion of the said land. It was the pleading of the plaintiffs that they have purchased the suit property from defendant through registered sale deed dated 15.04.1994 and came into possession of the same. He got it diverted for non agricultural purposes and made an application for its demarcation on 24.06.1997 before the Tehsildar Tilda. On being demarcated it was found that the defendant is in possession of 4 dismil of land on one part of his purchased land which was shown as ABCD part in the sketch map annexed with the plaint. When the plaintiff came to know about the encroachment of defendant over their land, they made an application under Section 250 of Chhattisgarh

Land Revenue Code, 1959 (in short, the Code) for removal of the encroachment of the defendant from the suit land. The said application was filed on 20.05.1999, however, Tehsildar, Tilda rejected their application on 31.05.1999. The plaintiffs filed an appeal before the SDO (Revenue) Tilda against the order dated 31.05.1999. The said appeal was allowed by the SDO Revenue, Tilda on 10.07.2001 after hearing the parties and the order passed by the Tehsildar Tilda was set aside. The defendant challenged the said order of SDO Revenue, Tilda, before the Commissioner, Raipur Division, Raipur and the said appeal filed by the defendant was dismissed on 15.04.2009.

- 4 Challenging the order dated 15.04.2009 passed by the Commissioner, Raipur Division, Raipur, the defendant filed a revision before the Chhattisgarh Board of Revenue, Bilaspur which was decided on 26.03.2013 and the orders passed by the SDO Revenue, Tilda, and Commissioner Raipur Division were affirmed and the order passed by the Tehsildar, Tilda, Raipur dated 31.05.1999 was set aside. Being dissatisfied with the orders passed by the revenue courts, the defendant filed Writ Petition (227) No.257 of 2013 before the High Court. The said writ petition was decided on 31.03.2014 upholding the order passed by the Tehsildar Tilda dated 31.05.1999 and setting aside the orders passed by the Board of Revenue dated 26.03.2013. It is also pleaded that the High Court in its order dated 31.03.2014 observed that the plaintiffs cannot take recourse to the provisions of Section 250 of the Code and if they want to get vacant possession of their land, they can take recourse of law available to them. Therefore,

the plaintiffs have filed the present civil suit. It has also been pleaded that the plaintiffs are title and possession holder of the suit property which was encroached by the defendant and constructed his hutment for which the plaintiffs are entitled for vacant possession of the same.

- 5 The defendant filed his written statement and denied the plaint averments. He pleaded in his written statement that he was suffering from mental illness in between 1992 to 1995 and he was not aware of his own well being. His treatment was continued with Dr. Anand Dubey, Psychiatrist and he could recover from his ailment gradually after 1996. The suit land was obtained by him in partition from his father on 26.12.1968 and it was his ancestral property. His sons Devendra Kumar and Harish Kumar were also having their right and title by birth and the defendant was having alienable title of total 65 dismil of land. By taking advantage of his ailment and by misrepresentation, the plaintiffs got the sale deed executed and registered for total 80 dismil of land instate of 65 dismil of land. Though the sale deed shown to be registered for 80 dismil of land, but the plaintiff obtained possession of only 65 dismil of land and remaining land is still in possession of defendant. Though the names of plaintiffs mutated in the revenue records, however, merely mutation of his name in the revenue record does not convey any title in his favour and remaining 15 dismil of land is the ancestral property of defendant. Out of 15 dismil of land, the house of defendant is constructed over 4 dismil and remaining land is adjacent open land. It is also pleaded that the plaint map is incorrect and he also annexed

correct map along with his written statement. He specifically denied any encroachment over the land of plaintiff and also denied his entitlement of vacant possession. It has also been pleaded that since the defendant was having right over 65 dismil of land, he can only alienate to that extent and the sale deed executed by him is valid only to the extent of 65 dismil of land. His house is constructed since 40-45 years back and he is residing with his family there. Over the land in which the defendant is in possession, the plaintiffs have not acquired any right or title and also not entitled for any damages. He also specifically denied that he is encroacher over the said land. He also raised the issue of limitation to file a suit as sale deed was allegedly executed on 15.04.1994 and plaintiffs filed their suit on 04.08.2014.

- 6** The defendant also filed his counter claim under Order 8 Rule 6 of CPC. In his counter claim, he reiterated the fact as has been mentioned in his written statement and gave the fourcorners of the suit land of his possession with respect to 15 dismil of land and according to fourcorners of the suit land, in the northern side Neora road, in the southern side one Petrol Pump, in eastern side the land of one Amoliya and in the western side main road was there. He further reiterated that the suit property was his ancestral property which he obtained in partition from his father and his children are coparcenar in the suit property and the defendant is having alienable title only to the extent of 65 dismil of land. The plaintiffs fraudulently got the sale deed executed with respect to entire 80 dismil of land, however, it could be validated only to the extent of 65 dismil of land in which Petrol Pump of

the plaintiff are running. Remaining 15 dismil of land is in possession of defendant and his family members. In the family partition, the defendants obtained 2 Acres of land from Khasra No.356/1 and 357/1 and the defendant is having only 1/3rd share over it which comes to 65 dismil and therefore claimed alienation beyond the share of vendor, the purchaser cannot obtain any title from the said sale deed. The defendant is in possession of the suit land since 40 years back by raising the construction of his house and therefore he filed his counter claim for restraining the plaintiffs from interfering in his peaceful possession of the said 15 dismil of land.

The counter claim of the defendant was also replied by the plaintiffs by filing written statement of the counter claim. The plaintiffs again reiterated the pleadings made in the plaint and pleaded that the defendant, with his full conscious and knowing the entire facts, executed the sale deed of 80 dismil of land after receiving entire sale consideration. The defence of mental illness of the defendant is only a created ground to avoid liability. The sale consideration was paid to him through cheque and cash and thus the defendant cannot take the benefit that he was not of sound mind at the time of execution of said sale deed. It is also pleaded that during the revenue proceeding, the defendant never raised any ground that he was mentally unsound at the time of registration of sale deed and it is only the defence taken in the civil suit. The defendant being the encroacher is liable to be vacated from the suit property and defendant is not entitled for any relief.

7 Based on the pleadings of the parties, the trial court framed following issues:

क्र	वाद प्रश्न	निष्कर्ष
1	क्या वादी ने प्रतिवादी से उसके स्वामित्व एवं आधिपत्य की भूमि ग्राम सासाहोली, प.ह.नं. 7. रा.नि.मं. तिल्दा, जिला रायपुर छ.ग. में स्थित कृषि भूमि खसरा नंबर 356/1, 357/1 दोनों का टुकड़ा कुल रकबा 0.324 हे. अर्थात् 0.80 एकड़, जिसके एक छोटे से हिस्से पर कच्चा कवेलू पोश झोपड़ी निर्मित है, को पंजीकृत विक्रय पत्र दिनांक 15.04.1994 को कय किया था तथा राजस्व अभिलेखों में अपना नाम चढ़ाकर दाखिल कब्जा हुआ ?	'प्रमाणित नहीं'
2	क्या प्रतिवादी द्वारा उक्त भूमि के 4 डिसमिल जिस पर कवेलू झोपड़ी निर्मित है, पर अनाधिकृत कब्जा किया गया है ?	'प्रमाणित नहीं'
3	क्या वादी वादग्रस्त स्थल पर कच्चा कवेलू पोश झोपड़ी को तोड़कर रिक्त आधिपत्य प्राप्त करने का अधिकारी है ?	'प्रमाणित नहीं'
4	क्या वादी स्थायी निषेधाज्ञा को प्राप्त करने का अधिकारी है ?	"नहीं"
5	क्या उक्त विक्रय विलेख में वादी 65 डिसमिल के स्थान पर 80 डिसमिल रकब अनुचित ढंग से लिखकर निष्पादित करवाया गया है ?	"प्रमाणित नहीं"
6	क्या प्रतिवादी द्वारा वादी को केवल 65 डिसमिल भूमि का कब्जा प्रदान किया गया था ?	"प्रमाणित नहीं"
7	क्या वादी को 65 डिसमिल भूमि ही विक्रय करने का अधिकार था ?	"प्रमाणित नहीं"
8	क्या प्रतिवादी का हिन्दू सहदायिक परिवार प्रतिदावा के साथ संलग्न मानचित्र में वर्णित एबीसीडी में 40 वर्षों से दाखिल काबिज होते हुये निवासरत है ?	'वादग्रस्त स्थल 04 डिसमिल भूमि जिस पर कच्चा कवेलुपोश झोपड़ी पर प्रतिवादी बिकीनामा दिनांक 15.04.1994 से आज तक दाखिल काबिज होकर निवासरत है।
9	क्या प्रतिवादी उक्त भूमि के संबंध में प्रतिदावा में वर्णित स्थायी निषेधाज्ञा प्राप्त करने का अधिकारी है ?	उक्त 04 डिसमिल भूमि जिस पर मकान निर्मित है, के संबंध में प्रतिवादी, वादी के विरुद्ध विधि के सम्यक् अनुक्रम से

		अन्यथा बेदखल करने से स्थायी रूप से निषेधाज्ञा पाने का अधिकारी है।
10	क्या वादी का वाद समय अवधि बाधित है ?	"नहीं।
11	क्या प्रतिवादी का प्रतिदावा समय अवधि बाधित है ?	"नहीं।
12	सहायता एवं व्यय ?	'निर्णय की कंडिका 46 के अनुसार, वादी का वाद निरस्त किया जाता है एवं प्रतिवादी का प्रतिदावा आंशिक रूप से स्वीकृत किया जाता है।"

- 8** In support of their case, the plaintiffs have examined Suresh Kumar, PW-1 and relied upon documents i.e. spot map Ex.P/1, copy of order dated 10.07.2001 passed by SDO Revenue, Raipur, Ex.P/2 (Article-A), copy of order dated 15.04.2009 passed by the Commissioner Raipur, Ex.P/3 (Article-B), copy of order dated 26.03.2013 passed by the Board of Revenue, Ex.P/4 and copy of order dated 31.03.2014 passed by the High Court in WP(227) No.257 of 2013, Ex.P/5, copy of plaint filed at Court at Tilda Ex.P/6, written statement Ex.P/7 and the copy of sale deed dated 22.04.1994 Ex.P/8.
- 9** The defendant-Prahlad Dewangan has been examined as DW-1 and relied upon document of revenue order sheets of Tehsildar, Tilda Ex.D/1, stay order passed by Tehsildar Tilda Ex.D/2, notice issued by Revenue Inspector Tilda for demarcation Ex.D/3 & D/4, order sheets of Tehsildar Tilda Ex.D/5, order dated 17.08.2018 passed by Tehsildar Tilda Ex.D/6, application filed before Tehsildar Tilda for demarcation Ex.D/7, memo issued for demarcation Ex.D/8, notice issued by the Revenue Inspector Tilda Ex.D/9, the objection of defendant raised

before Tehsildar not to carry out demarcation Ex.D/10, copy of revenue records of suit property Ex.D/11, Medical reports Ex.D/12 to D/14, order sheets of civil suit No.11-A/2022 of the Tilda Court Ex.D/15 and the copy of the plaint Ex.P/16.

- 10** After hearing the parties and conclusion of trial, the trial court dismissed the plaintiff's suit and partly decreed the counter claim of the defendant holding that plaintiff failed to prove that defendant is in unauthorized possession of 4 dismil of land in which his house was constructed. It is also held that right to alienate only 65 dismil of land by the defendant is also found not proved and the defendant is in possession of 4 dismil of land since 15.04.1994 i.e. the date of execution of sale deed, and defendant is entitled for permanent injunction over the said part of the land. The said judgment and decree passed by the trial court is challenged by the plaintiffs in these two appeals i.e. one against dismissal of suit while another against partly allowing the counter claim of the defendant.
- 11** In First Appeal No.74 of 2024, the appellant has filed an application under Order 41 Rule 27 CPC along with copy of sale deed dated 15.04.1994 for taking additional documents on record.
- 12** Learned counsel appearing for the appellant would submit that the plaintiff has categorically pleaded in his plaint that defendant has executed the sale deed on 15.04.1994 with respect to entire 80 dismil of land and the title has been transferred for entire 80 dismil of land in his favour. The sale deed has not been challenged by the defendant that it was executed by fraud and coercion, however, the defence

raised by the defendant was that he was entitled to alienate the suit property to the extent of only 65 dismil of subject land. When the defendant has admitted the receipt of entire sale consideration, it would amount to receipt of sale consideration with respect to entire 80 dismil of land. The claim of defendant that he is in possession of 15 dismil of land has been negated by the trial court, however, he was found in possession of only 4 dismil of land over which his house is found to be constructed. When plaintiff is title holder of entire 80 dismil of land and possession of defendant is found inside the said 80 dismil of land, the plaintiff is entitled for vacant possession of the said part of the land. The defendant has failed to prove his title over the said land and therefore he cannot retain possession of the same. The defendant has failed to prove that sale deed was executed under the influence and coercion of the plaintiff. Since 1994 till filing of his counter claim in the suit, the defendant has not challenged execution of sale deed or his title and possession over the subject property. He would also submit that the trial court has observed in its judgment that plaintiff has not produced the original copy of sale deed dated 15.04.1994 and also the demarcation report which he obtained from revenue authorities which he filed in these appeals along with application under Order 41 Rule 27 CPC. The unchallenged sale deed confers title of 80 dismil of land upon the plaintiff and he is entitled for a decree as has been claimed in the suit. He would also submit that the trial court without any basis held that the defendant is in possession of 4 dismil of land and has partly allowed his counter claim restraining the plaintiff from

possession of the defendant over 4 dismil of land. Since defendant has already transferred the title of said land in favour of the plaintiff, no injunction can be granted in his favour when he fails to establish his title over the said part of the suit property. Therefore, the impugned judgment and decree is erroneous and the same is liable to set aside and a decree may be granted in favour of plaintiff with respect to claim as has been made in the suit.

- 13** On the other hand, learned counsel for the respondents opposes the submissions made by the counsel for the appellants and supported the impugned judgment and decree passed by the trial court. He would also submit that along with defendant there are other coparceners whose right and title was also there in the suit property. Defendant alone was not entitled to alienate 80 dismil of land in favour of plaintiff. About 2 Acres of land came into share of defendant's family in which his sons Devendra Kumar, Harish Kumar and daughter Ku. Kamini were also coparceners and thus the defendant had alienable title only to the extent of 65 dismil of land. There is no any document with respect to partition between them and the sale deed can be validated only to the extent of 65 dismil of land. The defendant delivered possession of land only to the extent of 65 dismil of land and he is in possession of 15 dismil of land out of which his house was situated on 4 dismil and he is cultivating over 11 dismil of land. The plaintiff has not taken any action for about 20 years i.e. from the date of execution of sale deed dated 15.04.1994 till filing of suit which itself shows that he only purchased 65 dismil of land and obtained possession of the

same. He got his land demarcated on 09.01.1998 and since then he was in knowledge of the fact. The application filed by the plaintiff under Section 250 of the Code has also been dismissed by the Tehsildar Tilda on 31.05.1999. The matter was traveled up to Board of Revenue and this court in Writ Petition No.257 of 2013 in which the order passed by the Tehsildar Tilda was affirmed and other orders have been set aside and it is held that the plaintiff cannot take recourse to Section 250 of the Code and he can approach before the competent court for redressal of his grievance. The defendant is in possession of 15 dismil of suit land since more than 25-30 years and therefore the suit of the plaintiff for possession is barred by limitation. The application filed by the appellant under Order 41 Rule 27 CPC cannot be considered as he himself failed to produce copy of sale deed through which he purchased the suit property. When he himself was plaintiff before the trial court and his suit was based on the said sale deed dated 15.04.1994, he ought to have produced the sale deed before the trial court itself. There is no explanation as to why the said sale deed has not been produced before the trial court. Therefore, the plaintiff was negligent in producing the evidence and the trial court has rightly dismissed the suit of plaintiff and partly decreed the counter claim of defendant which needs no interference.

- 14** We have heard the counsel for the parties and perused the record of trial court.
- 15** PW-1, Surseh Kumar has stated in his examination in chief as per his plaint averment and stated that he purchased the suit property of 80

dismil of land through registered sale deed dated 15.04.1994. His name has been mutated in the suit land and he got it diverted from the competent authority. On 24.06.1997 he made his application before the Tehsildar Tilda for demarcation of his land and after its demarcation the defendant was found in possession of 4 dismil of his land in which a hutment of defendant is situated which is the subject property in the present suit. He also made an application under Section 250 of the Code before the Tehsildar Tilda. The said application was rejected on 31.05.1999. He filed an appeal before the SDO Revenue which was allowed on 10.07.2001 and order of reinstatement of possession was passed. The order of SDO Revenue Raipur was challenged before the Additional Commissioner Raipur by the defendant which was dismissed vide order dated 15.04.2009 and thereafter Revision before the Board of Revenue was also dismissed on 26.03.2013, however, the respondent filed Writ Petition 257 of 2013 before this court which was allowed on 31.03.2014 and the order passed by the Tehsildar was affirmed and directed the plaintiff to avail the appropriate remedy available under the law and then civil suit was filed.

In cross examination, he admits that in the spot map Ex.P/1 there is no mention of its measurement and it has also not been mentioned as to who has prepared it. When the question was put to this witness that he has obtained possession of only 65 dismil of land, he answered that except hutment of defendant, he has obtained possession of remaining part of the land and the defendant assured

that after sometime he will vacate the hutment. He admits that the land which he purchased in the year 1994, a Petrol Pump is running there over 65 dismil of land. He admits that he was never in possession of the subject land and after about 20 years he filed the present suit for possession. He denied that defendant and his family is in possession of 15 dismil of land. He voluntarily stated that defendant is in possession of 5-7 dismil of land behind his hutment. After 4-5 years of the sale deed dated 15.04.1994 he came into possession of the said land and presently he is not in possession of entire 80 dismil of land. He sold 19000 sq. ft. of land to Ankit Agrawal in the year 2009-10. When he confronted with the map Ex.P/1, he explained that after leaving hutment of defendant, he sold the remaining land to Ankit Goyal. He admits that since 1994, Amoliya Dewangan, Prahlad and their family members are in possession of ABCDEF part of the map Ex.P/1. He further admits that son of Prahlad Dewangan constructed a Pakka house over the subject land and running his business. He admits that he filed an application against construction of defendant over 19143 sq.ft. of land which is still pending before the Tehsildar. He admits that he has not filed copy of complaint which he made against Amoliya. Prahlad was having 2 Acres of land, but he did not know as to whether his family members are in possession of 1 Acre and 45 dismil of land or not? He has not denied that in the suit property the house of Prahlad Dewangan is situated.

From the evidence of plaintiff it transpires that though the sale deed conveyed 80 dismil of land, however, he got possession of land

except the hutment of defendant which was situated over the suit land. Admittedly, the hutment of the defendant is situated over 4 dismil of land and possession of the same was not delivered to the plaintiff at the time when the sale deed was executed.

16 The defendant Prahlad Dewangan examined himself as DW-1 and he too have stated in his examination in chief as per his written statement as well as counter claim filed by him. He stated in chief examination that he received 2 Acres of land on partition from his father and his son Devendra, Harish and daughter Ku. Kamini were also the coparcener with him. He was entitled to alienate only 65 dismil of land, but due to his illiteracy the plaintiff took undue advantage and keeping them in dark, they got executed sale deed of entire 80 dismil of land, however, possession was delivered to him only to the extent of 65 dismil of land and he is in possession of remaining 15 dismil of land including the hutment situated over it since 40-45 years and residing with his family members. The proceeding under Section 250 of Code before the revenue authorities have been rejected by order dated 31.03.2014 passed by this court in WP No.257 of 2013. To grab the property of defendant, the plaintiff has filed the suit in which he filed the counter claim for declaration and permanent injunction over the land in which he is in possession.

In cross examination, he proved the documents of orders of revenue courts, demarcation report and their objection and also the revenue documents. He admitted that out of total 80 dismil of land, his hutment is situated in a small piece of land. He further reiterated that

he sold only 65 dismil of land and not 80 dismil. He admits that on 22.04.1994 he executed a sale deed of remaining 1.20 Acres of land in favour of his wife Amoliya Bai. Since his health condition was not good, his wife got executed the sale deed in her favour. Though his name has been deleted from the revenue records after execution of sale deed, however, he is still in possession of 15 dismil of land. He proved his medical report Ex.D/12 to D/14 and stated that he was taking treatment of his mental illness from the Doctor and in such influential state of his health condition, the plaintiff got executed the sale deed. He reiterated that he sold only 65 dismil of land to the plaintiff and received sale consideration of only said part of land.

- 17** The trial court while considering the evidence produced by the parties and also in view of limitation provided for filing suit as well as possession of the defendant over 4 dismil of land in which his hutment was constructed and also the evidence with respect to registration of the sale deed by the defendant after obtaining the sale consideration, delivery of possession and admitted fact that defendant was in possession of small portion of land in which the hutment was constructed, passed the judgment and decree dismissing the suit of plaintiff with respect to declaration of title and vacant possession of the portion of land in which a hutment of defendant is situated, and has partly decreed the counter claim filed by the defendant with respect to that part of suit land in which he was in possession. Though the defendant claimed that he is in possession of 15 dismil of land, however, the trial court has considered that defendant is in possession

of only 4 dismil of land over which his hutment was constructed and possession was delivered to the plaintiff with respect to remaining part of the land under sale deed dated 15.04.1994.

- 18** It is settled law that mutation entries does not confer any title in favour of the persons whose name is mutated in the revenue records. It is only for the physical purposes (kindly see- ***Balwant Singh Vs. Daulat Singh, 1997(7)SCC 137 and Jitendra Singh Vs. State of MP & Others, 2021 SCC Online SC 802***)
- 19** Further, the plaintiff has filed the suit for possession of the suit property mentioned in ABCD part of the map annexed with the plaint, damages and permanent injunction, however, he has not filed the suit for declaration of his title. The defendant has specifically denied about alienation of the suit property of entire 80 dismil of land, however, he has stated that he sold only 65 dismil of land and the remaining land is in his own possession. He denied that the plaintiff has not obtained any title over 15 dismil of land in which the defendant is in possession. In his written statement as well as his counter claim the defendant No.1 specifically claimed that he is the title holder of the suit property and the plaintiff has no right or title over the same. When the defendant No.1 have specifically denied that the plaintiff is not the title holder of remaining land of 15 dismil in which he is in possession, the title of the plaintiff went in cloud and he requires to claim the declaration of title in his suit also.
- 20** In case of ***Anathula Sudhakar Vs. P. Buchi Reddy (Dead) By LRs and Others, 2008(4)SCC 594***, the Hon'ble Supreme Court has held in paragraph 21 as under:

“To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under :

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in *Annaimuthu Thevar* (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”

- 21** So far as the application filed by the plaintiff under Order 41 Rule 27 CPC is concerned, it transpires from the record of trial court that plaintiff filed the certified copy of sale deed dated 15.04.1994 which is marked as Ex.P/8. The appellant have not explained as to why the said sale deed has not been produced during trial of the case when his claim was based on the said sale deed dated 15.04.1994 that he

purchased the entire 80 dismil of land. The plaintiff is not a layman, but is a firm duly prosecuted by its Proprietor Suresh Kumar Agrawal and after his death, by the other legal heirs. The suit was filed on 04.08.2014, however, till decision of the suit the plaintiff has not filed the said sale deed which appears to be a gross negligence on his part.

22 In *Union of India Vs. Ibrahim Uddin and Another, 2012(8)SCC 148,*

the Hon'ble Supreme Court has held in paragraph 36 to 41 as under :

“36. The general principle is that the Appellate Court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order XLI Rule 27 CPC enables the Appellate Court to take additional evidence in exceptional circumstances. The Appellate Court may permit additional evidence only and only if the conditions laid down in this rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, provision does not apply, when on the basis of evidence on record, the Appellate Court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the rule itself. (Vide: K. Venkataramiah v. A. Seetharama Reddy & Ors., AIR 1963 SC 1526; The Municipal Corporation of Greater Bombay v. Lala Pancham & Ors., AIR 1965 SC 1008; Soonda Ram & Anr. v. Rameshwaralal & Anr., AIR 1975 SC 479; and Syed Abdul Khader v. Rami Reddy & Ors., AIR 1979 SC 553).

37. The Appellate Court should not, ordinarily allow new evidence to be adduced in order to enable a party to raise a new point in appeal. Similarly, where a party on whom the onus of proving a certain point lies fails to discharge the onus, he is not entitled to a fresh opportunity to produce evidence, as the Court can, in such a case, pronounce judgment against him and does not require any additional evidence to enable it to pronounce judgment. (Vide: Haji Mohammed Ishaq Wd. S. K. Mohammed & Ors. v. Mohamed Iqbal and Mohamed Ali and Co., AIR 1978 SC 798).

38. Under Order XLI, Rule 27 CPC, the appellate Court has the power to allow a document to be produced and a witness to be examined. But the requirement of the said Court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. This provision does not entitle the appellate Court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in a case. It does not entitle the appellate Court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. In other words, it is only for removing a lacuna in the evidence that the appellate Court is empowered to admit additional evidence. [Vide: Lala Pancham & Ors. (supra)].

39. It is not the business of the Appellate Court to supplement the evidence adduced by one party or the other in the lower Court.

Hence, in the absence of satisfactory reasons for the non- production of the evidence in the trial court, additional evidence should not be admitted in appeal as a party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this rule. So a party who had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal. (Vide: State of U.P. v. Manbodhan Lal Srivastava, AIR 1957 SC 912; and S. Rajagopal v. C.M. Armugam & Ors., AIR 1969 SC 101).

40. The inadvertence of the party or his inability to understand the legal issues involved or the wrong advice of a pleader or the negligence of a pleader or that the party did not realise the importance of a document does not constitute a "substantial cause" within the meaning of this rule. The mere fact that certain evidence is important, is not in itself a sufficient ground for admitting that evidence in appeal.

41. The words "for any other substantial cause" must be read with the word "requires" in the beginning of sentence, so that it is only where, for any other substantial cause, the Appellate Court requires additional evidence, that this rule will apply, e.g., when evidence has been taken by the lower Court so imperfectly that the Appellate Court cannot pass a satisfactory judgment."

- 23** The entire dispute revolves around the said sale deed which is the most important important in the suit as to whether the plaintiff purchased the entire 80 dismil of land, possession was delivered with respect to entire land and also other surrounding suspicious circumstances. The plaintiff was supposed to file the said sale deed at initial state itself, however, he failed to do so during pendency of the suit and there is no explanation in the application filed under Order 41 Rule 27 CPC as to why they have not produced the said sale deed, except bald explanation that they came to know during pendency of present appeal that sale deed dated 15.04.1994 has not been produced by the plaintiff and it is necessary to pronounce judgment effectively. To do complete justice between the parties, in absence of any explanation on the part of plaintiff, the same cannot be taken into consideration and it cannot be permitted to be taken on record at this stage which amounts to fulfill the lacuna and accordingly the

application filed by the plaintiff/appellant under Order 41 Rule 27 is rejected.

- 24** Having gone through the entire facts and circumstances of the case, pleadings of the parties and documents filed by the respective parties in their support, and also after examining the judgment passed by the trial court, we are of the considered opinion that judgment passed by the trial court is based on proper appreciation of evidence and law applicable to it and the same does not require any interference by which the suit of plaintiff was dismissed whereas the counter claim of defendant was partly allowed.
- 25** Accordingly, we dismiss both the appeals filed by the appellants against dismissal of suit as well as partly allowing the counter claim. The parties to bear their own costs.
- 26** An appellate decree be drawn accordingly.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Head-Note

When the plaintiff's title is in cloud and defendant claimed his own title over the subject property, the plaintiff is required to file suit for declaration of title and possession and without a finding of title thereon in favour of plaintiff, decree of possession cannot be passed.