

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.730 of 1999**

Prakash Narain, S/o Late Lalit Shankar Bahidar, aged about 35 years,
Occupation Khangri Service, R/o Bahidarpara, Raigarh (CG)

---- Appellant

Versus

1 Sharda Prasad (dead) through LRs

1A Jayant Bohidar, S/o Late Shri Sharda Prasad

1B Anand Bohidar S/o Late Shri Sharda Prasad

1C Santosh Bohidar S/o Late Shri Sharda Prasad

1D Pankaj Bohidar S/o Late Shri Sharda Prasad

All are R/o Bohidar Para, Lal Tanki, Raigarh (CG) 496 001

2. Raj Kishore @ Munu (dead) through LRs

2A Rajnikant Bohidar S/o Late Shri Raj Kishore @ Munu

2B Yugal Bohidar S/o Late Shri Raj Kishore @ Munu

2C Chandu Bohidar S/o Late Shri Raj Kishore @ Munu

All are R/o Bohidar Para, Lal Tanki, Raigarh (CG) 496 001

3. Mst. Khirondra Kumari @ Ravindra Kumar (dead)

4. Ashutosh Purseth S/o Ramesh Prasad Purseth, aged about 42 years, at present R/o village Ichapur, Post Office Badigga, Tehsil Bodhgarh, Dist. Kulbani (Odissa)

5. Narendra Prasad (dead) through LRs

5A Vimalkant Bohidar S/o Late Shri Narendra Prasad, R/o E-22, Sector-2, City Rourkela, Dist. Sundergarh (Odissa) PIN 769 006

5B Bakim Chandra Bohidar S/o Late Shri Narendra Prasad

5C Bikas Bohidar S/o Late Shri Narendra Prasad

5-B & 5-C are R/o Panposh Basti, Raghunathpali (Panposh), Dist. Sundergarh (Odissa) PIN 769 004

5D Chinmay Bohidar S/o Late Shri Suryakant Bohidar, C/o Dr. B.K. Patnayak, Mohanti Para, Sambalpur (Odissa)

5E Shantanu Bohidar S/o Late Shri Suryakant Bohidar, Rourkela (Odissa)

5F Upma Bohidar Wd/o Late Shri Suryakant Bohidar, Panpos
(Raghunathpali) Rourkela (Odissa)

6. State of Madhya Pradesh (Now Chhattisgarh), through the Col-
lector, Raigarh, Dist. Raigarh (CG)

----- Respondents

For Appellant	:	Mr.B.D.Guru, Advocate
For Respondent No.1 to 5	:	Mr.Vipin Punjabi, Advocate
For Respondent No.6	:	Mr.Avinash Singh, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

06/09/2018

1. The substantial question of law involved, formulated and to be answered by this Court in this defendant's second appeal is as

under:-

“Whether the suit, as framed and filed, is maintainable in the eyes of law ?”

2. The imperative facts required for determination of above-stated substantial question of law are as under:-

[For the sake of convenience, the parties would be referred hereinafter as per their status shown in the suit before the trial Court]

(2.1) The plaintiffs filed a suit in relation to 29.79 acres of the land described in Schedule “A” of the plaint and sought an injunction restraining the Revenue Court to proceed with the partition on the pleading that there has already been a partition in the family and also sought that the suit land mentioned in schedule “A” has already been

partitioned and re-partition cannot be made through Revenue Court.

(2.2) Defendant No.1 filed his written statement stating inter-alia that there has never been any partition in the family and that the plaintiffs are occupying the entire property forcibly. It has also been stated that Mst. Sushila has never executed any will in favour of defendant No.3.

3. The trial Court after appreciating oral and documentary evidence available on record decreed the suit in part and held that the suit land shown in Schedule "A" of the plaint has already been partitioned in the year 1955 and there is no necessity for re-partition through Revenue Court.

4. Feeling aggrieved against the judgment and decree of the trial Court, the defendant No. 1 preferred first appeal before the First Appellate Court. That appeal has been dismissed by the First Appellate Court affirming the judgment and decree of the trial Court.

5. Assailing legality, validity and correctness of the judgment and decree passed by the First Appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellant/defendant No.1, in which substantial question of law has been framed by this Court, which has been incorporated in the opening paragraph of this judgment.

6. Mr.B.D. Guru, learned counsel for the appellant/defendant No.1, would submit that suit as framed and filed seeking injunction restraining the Revenue Court is barred by the provisions of Section

41 (b) of the Specific Relief Act, 1963 (hereinafter called as “the Act of 1963”), as such, both the Courts below are unjustified in granting the relief in favour of the plaintiff and suit is liable to be dismissed.

7. Mr.Vipin Punjabi, learned counsel for the respondents No.1 to 3 (LR's of original plaintiff), would submit that declaration and injunction were sought for restraining the Revenue Court to proceed with the partition, but in fact only relief of declaration of title was granted by the trial Court and no injunction was granted by the trial Court and in fact, it was dismissed, therefore, this ground is not available to the appellant/defendant, as such, the second appeal deserves to be dismissed.

8. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.

9. A focused glance of the plaint would show that the plaintiff sought two kinds of relief. Firstly, he sought relief of declaration that the suit property mentioned in Schedule “A” has already been partitioned among the parties and therefore, re-partition by the Revenue Court cannot be made. Secondly, he sought relief that proceeding initiated by the Revenue Court on the basis of application filed by defendants No.1 and 2 be restrained by permanent injunction.

10. Upon consideration, the trial Court has granted only relief of declaration holding that partition has already been taken place among

the parties, therefore, it cannot be subjected to re-partition, but with respect of relief of permanent injunction against the Revenue Court, which has been initiated on the basis of application of defendants No.1 and 2, the trial Court by its judgment and decree had already held that since Revenue Court is not the court subordinate to the Civil Court, therefore, no injunction can be granted to stay the proceeding of the Revenue Court in view of the provisions contained in Section 41(b) of the Act of 1963. The said finding has attained finality as it was not challenged by the plaintiffs by filing appeal before the First Appellate Court, therefore, suit cannot be held to be not maintainable on that count as the said relief has already been refused by the trial Court.

11. Section 41(b) of the Act of 1963 states as under:-

“41. Injunction when refused.-An injunction cannot be granted-

(a) xxx xxx xxx

(b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;”

Section 41(b) of the Act of 1963 is one of provision which provides that perpetual injunction cannot be granted and it is one of exception to the general rule contained in Section 38 of the Act and further provides that one court cannot by injunction restrain the proceedings pending in another court which is not subordinate to it.

12. The Court of Tahsildar empowered under Section 7 of the

Orissa Prevention of Land Encroachment Act, 1972 to summarily evict any person unauthorisedly occupying Government is not a court sub-ordinate to civil court and Section 41(b) of the Act of 1963 has been held to a bar for grant of injunction to restrain the Tahsildar from dispossessing the plaintiff (See K.Duriyendra v. State of Orissa¹)

13. In the matter of Cotton Corporation of India Limited v. United Industrial Bank Limited and others² the Supreme Court has held as under:-

"7.....

"41. An injunction cannot be granted :-

(a)

(b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;

....."

The predecessor of Sec. 41 (b), Sec. 56 (b) of the Specific Relief Act of 1887 repealed by 1963 Act read as under :

"56. Injunction cannot be granted :-

(a)

(b) to stay proceeding in a Court not subordinate to that from which the injunction is sought,"

A glance at the two provisions, the existing and the repealed would reveal the legislative response to judicial interpretation. Under Sec. 56 (b) of the repealed Act, the Court was precluded by its injunction to grant stay of proceeding in a court not subordinate to that from which the injunction was sought. In other words, the Court could stay by its injunction a proceeding in a court subordinate to the

¹ AIR 1992 Orissa 297

² AIR 1983 SC 1272

court granting injunction. The injunction granting stay of proceeding was directed to the Court and the Court has to be the Court subordinate to the one granting the injunction. This is postulated on the well recognised principle that the superior court can regulate proceedings in a court subordinate to it. It is implicit in this assumption and the language used in Sec. 56 (b) that the court could not grant injunction under Sec. 56 (b) of the repealed Act to stay proceeding in a court superior in hierarchy to the Court from which injunction is sought. But by judicial interpretation, a consensus was reached that as injunction acts in personum while the Court by its injunction cannot stay proceedings in a Court of superior jurisdiction; it could certainly by an injunction restrain a party before it from further prosecuting the proceeding in other courts may be superior or inferior in the hierarchy of courts. To some extent this approach not only effectively circumvented the provision contained in Sec. 56 of the repealed Act but denuded it of its content. The Legislature took notice of this judicial interpretation and materially altered the language of the succeeding provision enacted in Sec. 41 (b) replacing Sec. 56 (b) of the repealed Act while enacting Specific Relief Act of 1963. The Legislature manifestly expressed its mind by enacting Sec. 41 (b) in such clear and unambiguous language that an injunction cannot be granted to restrain any person, the language takes care of injunction acting in personum, from instituting or prosecuting any proceeding in a court not subordinate to that from which injunction is sought. Sec. 41(b) denies to the court the jurisdiction to grant an injunction restraining any person from instituting or prosecuting any proceeding in a court which is not subordinate to the court from which the injunction is sought. In other words, the court can still grant an injunction restraining a person from instituting or prosecuting any proceeding in a court which is subordinate to the court from which the injunction is sought. As a necessary corollary, it would follow that the court is precluded from granting an injunction restraining any person from instituting or prosecuting any proceeding in a court of co-ordinate or superior jurisdiction. This change in language deliberately adopted by the Legislature after taking note of judicial vacillation has to be given full effect.”



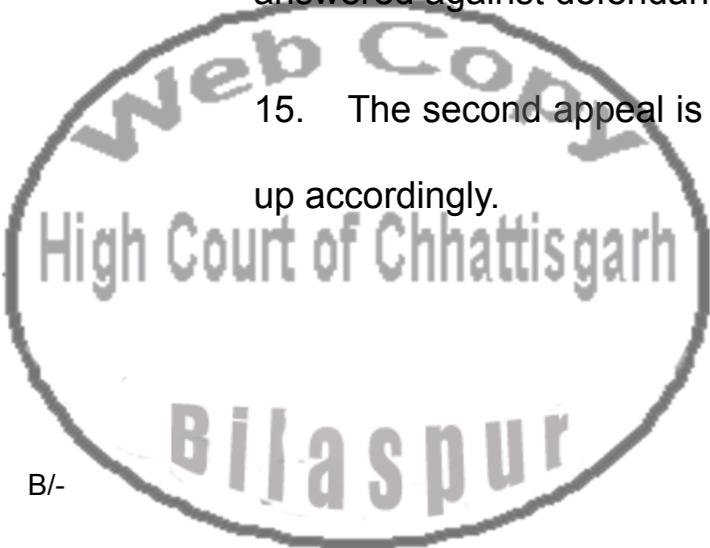
14. In view of the above-stated legal position, the trial Court has rightly held that the Revenue Court is not the court subordinate to the Civil Court, therefore, no injunction can be granted against Revenue Court under Section 41(b) of the Act of 1963. Therefore, it cannot be held that suit was not maintainable as relief with regard to injunction against the Revenue Court has already been dismissed by the trial Court which has attained finality in absence of challenge being made by the plaintiffs. Accordingly, the substantial question of law is answered against defendant No.1 and in favour of the plaintiff.

15. The second appeal is dismissed. No cost(s). A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-



HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No.730 of 1999****Appellant**

Prakash Narain

Versus**Respondents**Sharda Prasad (dead) through LRs
and others

(Head-note)

(English)

Revenue Court (Tahsildar) is not a court sub-ordinate to Civil Court, therefore, no injunction can be granted against Revenue Court.

(हिन्दी)

राजस्व न्यायालय (तहसीलदार) व्यवहार न्यायालय के अधीनस्थ न्यायालय नहीं है, अतः राजस्व न्यायालय के विरुद्ध कोई व्यादेश प्रदान नहीं किया जा सकता।

