2025:CGHC:61967

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 21 of 2014

PAWAN KUMAR JHA
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Date: 2025.12.23 13:03:36 +0530

Reserved on: 09.10.2025

Delivered on: 23.12.2025

Uploaded on: 23.12.2025

- Ayodhya Singh S/o Karan Singh Aged About 45 Years At Present R/o Jaijaipur, Near Pani Tanki, Ward No. 4, Tah. And P.S. Jaijaipur, Distt. Janjgir-Champa C.G.

--- Appellant/Defendant No. 1

versus

1. Heeramani (Died) Through Lrs. ...**Plaintiff**

   1.1 - Jagarmati Chandra W/o Late Heeramani Chandra Aged About 75 Years R/o Village - Bodsara, Tahsil - Jaijaipur, District- Sakti (C.G.)

   1.2 - Harnarayan Chandra S/o Late Heeramani Chandra Aged About 52 Years R/o Village - Bodsara, Tahsil - Jaijaipur, District- Sakti (C.G.)

   1.3 - Jyoti Chandra D/o Late Heeramani Chandra Aged About 48 Years W/o Pyarelal Chandra, R/o Village - Bodsara, Tahsil - Jaijaipur, District- Sakti (C.G.)

2. State Of Chhattisgarh Through- Collector, Distt. Janjgir-Champa C.G……..Defendant No. 2

---Respondents

For Appellants : Mr. Ramkumar Tiwari, Advocate and Mr. H.S. Patel, Advocate

For Respondent No. 1 (LRs.) : Mr. H.V. Sharma, Advocate with Mr. Vikas Dubey, Advocate

For Respondent No. 2-State : Mr. Kishan Sahu, Panel Lawyer

Hon'ble Shri Justice Parth Prateem Sahu

C.A.V. Judgment

1. This appeal under Section 100 has been preferred by appellant-defendant No. 1 questioning the legality and sustainability of impugned judgment and decree dated 24.09.2013 passed by learned 2nd Additional District Judge, Sakti District Janjgir-Champa in Civil Appeal No. 1-A/2012, by which learned First Appellate Court has allowed the appeal setting aside the judgment and decree passed by learned Civil Judge,Class-II, Jaijaipur, in Civil Suit No. 37-A/2010.

2. For the sake of convenience, parties shall be referred to in terms of their status shown in Civil Suit No. 37-A/2010 before the Trial Court.

3. Brief facts of the case necessary for disposal of this appeal, as projected in the plaint, are that the plaintiff and defendant No.1 jointly purchased land bearing Khasra No. 5124/4, measuring 0.37 acres, from Radheshyam, and their names were duly recorded in the revenue records. Subsequently, partition took place between them, under which each of them received land measuring 0.18 acres, while 0.01 acres of the land was left for a road/ passage. The portion of land allotted to the plaintiff, described in the Schedule A-B-C-D of the plaint (hereinafter referred to as *the suit land*), was distinct from the share allotted to defendant No.1, described in *Ka, A, Kh, Sa*. On the land of his share, plaintiff constructed a house on part therein marked *Chh, Ba, Fa, Nda*, admeasuring 45 x 15 sq.ft., and was in peaceful possession thereof. It is pleaded that during absence of plaintiff, defendant No.1 forcibly broke open the lock, took possession of the said house, and started construction upon it. Plaintiff lodged a complaint before the Tehsildar,

Jaijaipur, who issued an order of stay restraining further construction. Against this order, defendant No.1 preferred an appeal before the Sub-Divisional Officer, who affirmed the order of Tehsildar. Thereafter, the plaintiff instituted a civil suit seeking —Declaration that the house situated on the suit land (*Chh-Ba-Nda-Fa*) belongs to him; Possession of the said house from defendant No.1; and Permanent injunction restraining defendant No.1 from interfering with his possession and enjoyment of the suit land.

4. Defendant No.1, in his written statement and counterclaim, denied all material averments made in the plaint. He specifically denied that the plaintiff and defendant No.1 had jointly purchased Khasra No. 5124/4, measuring 0.37 acres, from Radheshyam, or that any partition took place between them as pleaded in plaint. He further denied that the plaintiff got 0.18 acres of land as described in the schedule annexed to the plaint, or that he ever constructed or resided in a house thereon. Defendant No.1 also denied the pleading that he forcibly broke open the lock of the plaintiff's house (shown in the plaint map as portions *Chh, Ba, Nda, Ha*) or took unlawful possession of it. He pleaded that the orders passed by the Tehsildar and Sub-Divisional Officer were obtained illegally and without jurisdiction at the instance of the plaintiff. It was further pleaded that the plaintiff neither has title nor possession over the suit land. The defendant asserted that he alone had purchased the entire 0.37 acres of land comprised in Khasra No. 5124/4 from Radheshyam after paying full consideration amount, and that the plaintiff's name was included in the sale deed only due to mutual trust and close relationship between them. Defendant No.1 also

stated that he had stopped the Gram Panchayat from constructing a public toilet in front of his house and had stopped the illegal encroachment attempted by one Bhimchandra. He further stated that for proper and lawful use of the said house, he had installed electricity and water connections and planted fruit and vegetable trees on the premises.

5. Defendant No. 2/State remained ex parte and no reply has been filed on its behalf.

6. On the basis of pleadings of the parties, learned trial Court framed as many as five issues for consideration, given opportunity to the parties to adduce evidence, both oral and documentary, and after a full fledged trial, rendered a decision non-suiting the plaintiff recording that the plaintiff failed to establish his claim of ownership and possession over the disputed property by placing evidence, whereas the defendants had successfully proved his counterclaim on the same. Accordingly, the plaintiff's suit was dismissed. Against the judgment and decree passed by the trial Court, plaintiff preferred first appeal under Section 96 CPC before the first appellate Court which came to be allowed by impugned judgment and decree herein, setting aside the judgment and decree of the trial Court. Aggrieved with which, this second appeal is filed by defendant No. 1.

7. This second appeal was admitted on the following substantial question of law:-

> "Whether the learned First Appellate Court justified in granting a decree for declaration with regard to 18 dismil of land whereas no relief was sought in this regard ?"

8. Learned counsel for appellant/defendant No. 1 would submit that the Respondent No. 1/ plaintiff in the plaint has pleaded that defendant No. 1 forcefully came in possession of the disputed property/ suit property, however, has not sought for relief of declaration of title on the entire suit property and has not sought for possession of entire suit property and therefore in absence of specific relief which could have been claimed by the plaintiff, learned first appellate court committed error in granting decree of declaration of title of entire land measuring 18 dismil bearing Khasra No. 5124/4. He also pointed out that from the pleading in the plaint, it is apparent that there is categorical pleading made therein that out of 18 dismill of land (0.18 acres), the house with specification *Chh, Ba, Nda, Fa* was constructed only in the area of measuring 45x15 sq.ft. which is much less than the 18 dismil of the area of suit land. Neither the relief was sought of possession in the plaint of the remaining area out of 18 dismil of land nor the first appellate court has granted decree in this regard of possession of remaining area of the land out of 18 dismil of total area of suit land. It is also contention that in absence of relief of declaration and possession learned first appellate court erred in passing a decree of declaration with regard to the land specified as *A, Ba, Sa, Da,* in the map enclosed along with plaint and also forming part of the judgment and decree impugned. In support of his contention, he placed reliance upon the decision in case of **Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust, Virudhunagar vs. Chandran and others** reported in **(2017) 3 SCC 702;** decision of Co-ordinate Bench of this Court passed in Second Appeal No. 225 of 2001 between **Municipal**

Corporation Bhilai vs. Managing Director, C.G. State Industrial Development Corporation and others decided on 06.02.2014; and another decision of Co-ordinate Bench in Second Appeal No. 416 of 2012 between **Jaan Bai and others vs. Thanda Ram and others** decided on 19.12.2023.

9. Learned counsel for legal representatives of Respondent No. 1/plaintiff would vehemently oppose the submission of learned counsel for defendant No. 1 and would submit that in the body of the plaint, there is mention of entire area of the suit land as 18 dismil (0.18 acres). He also contended that it is also pleaded that the total area which was purchased jointly by plaintiff and defendant No. 1 was 0.37 acres of land and both of them have partitioned the property purchased equally between them of 0.18 acres and 0.01 acre has been left for common passage. It is also pleadings in the plaint that the house for which the relief is sought is constructed within the area of 18 dismil and therefore the entire suit cannot be dismissed only on some technical flaw in seeking relief, if any. The Court is having wide discretion to grant the relief in such a situation. In support of his contention, he placed reliance upon the decision in case of **Managobinda and others vs. Brajabandhu Misra** reported in **AIR 1986 Ori 281**; **Neelawwa vs. Shivawwa** reported in **AIR 1989 Kar 45** and **Kashi Prasad vs. Banshidhar and others reported in AIR 2001 MP 185**. It is also contention of learned counsel for plaintiff that in case of a challenge to reversal decree passed by first appellate court this court can enter into the evidence to arrive at a conclusion that whether the finding recorded by the first appellate court is perverse to the evidence available on

record or not and therefore entire evidence available in record is to be considered.

10. At this stage, learned counsel for appellant/defendant No. 1 would submit that even upon reading the evidence as led by the plaintiff, it is apparent that the plaintiff in his evidence has admitted possession of defendant No. 1 in entire suit land of 18 dismil which shows that on the date of filing of civil suit, admittedly the plaintiff was not in possession of suit property, however, he had not sought relief of declaration of title and possession of entire suit property except the house constructed on the small portion of the entire suit land.

11. I have heard learned counsel for the parties and also perused the record of both the courts below.

12. The nature of relief sought and the admitted possession of the defendant No. 1 on the suit land are not in dispute. The only issue for consideration of this Court is whether the First Appellate Court exceeded its jurisdiction in granting a declaration for the entire 18 dismil of land, though the plaintiff did not seek such relief and the pleadings and relief were confined to the small portion ie., house constructed, and that the plaintiff admittedly was not in possession of open land. The issue involves interpretation of Section 34 of the Specific Relief Act and the settled law on relief beyond pleadings.

13. It is settled law that the Court cannot grant a relief not prayed for in the plaint. Hon'ble Supreme Court in case of **Bachhaj Nahar v. Nilima Mandal**, reported in **(2008) 17 SCC 491** has held that no amount of evidence can be looked into upon a plea which was never put forward in the pleadings. Nor can the Court grant a relief which is not claimed.

The Court further specified that deviation is permissible only when the issue is clearly understood by both parties and tried without objection and observed thus:

> "**13.** The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. As a result the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief. Therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief. The question before a court is not whether there is some material on the basis of which some relief can be granted. The question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the court could not be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when the defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.

14. In the present case, the suit filed by plaintiff was limited to the constructed house, and the defendant's defence was confined to that boundary. Therefore, the decree passed by the First Appellate Court declaring ownership of plaintiff over entire 18 dismil of land is beyond the pleadings and issues framed by the Trial Court, which is not sustainable in law.

15. The plaintiff in his evidence has admitted that the defendant was in possession of the entire 18 dismil at the time of filing the suit. The factual legal position is authoritatively laid down in by Hon'ble Supreme

Court in **Anathula Sudhakar v. P. Buchi Reddy**, reported in **(2008) 4 SCC 594**, where the Court observed that where the title of a person is not disputed, but he is not in possession, his remedy is to file a suit for possession. A person out of possession cannot seek the relief of injunction simpliciter. It was further held that where title is disputed and possession is not with the plaintiff, the appropriate suit must be one for declaration, possession and injunction. Relevant paragraphs of the said judgment are extracted below:

> "**13.** The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.
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> **13.1.** Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.
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> **13.2.** Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.
>
> **13.3.** Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able

> to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

16. From the above rulings and law laid down by Hon'ble Supreme Court, it is thus clear that the suit filed by the plaintiff without seeking a relief for possession of the entire 18 dismil, was not sustainable.

17. Section 34 of the Specific Relief Act explicitly bars a mere declaration where the plaintiff, being able to seek further relief, omits to do so. Hon'ble Supreme Court in the case of **Vasantha v. Rajalakshmi,** reported in **(2024) 5 SCC 282** while considering that whether the suit for declaration simpliciter was maintainable in absence of further relief, in view of Section 34 of the Specific Relief Act, 1963 observed thus:

> "**49.** We now proceed to examine the law on this issue. As submitted by the learned Senior Counsel for the appellant, in *Vinay Krishna* v. *Keshav Chandra* [*Vinay Krishna* v. *Keshav Chandra*, 1993 Supp (3) SCC 129] (two-Judge Bench), this Court while considering Section 42 of the erstwhile Specific Relief Act, 1877 to be *pari materia* with Section 34 of SRA, 1963 observed that the plaintiff's not being in possession of the property in that case ought to have amended the plaint for the relief of recovery of possession in view of the bar included by the *proviso*.
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> **50.** This position has been followed by this Court in *Union of India* v. *Ibrahim Uddin* (two-Judge Bench), elaborated the position of a suit filed without the consequential relief. It was observed : (SCC p. 173, paras 55-58)
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> > "*55*. The section provides that courts have discretion as to declaration of status or right, however, it carves out an exception that a court shall not make any such declaration of status or right where the complainant, being able to seek further relief than a mere declaration of title, omits to do so.

> *56*. In *Ram Saran* v. *Ganga Devi* [*Ram Saran* v. *Ganga Devi*, (1973) 2 SCC 60] this Court had categorically held that the suit seeking for declaration of title of ownership but where possession is not sought, is hit by the proviso to Section 34 of the Specific Relief Act, 1963 and, thus, not maintainable. In *Vinay Krishna* v. *Keshav Chandra* [*Vinay Krishna* v. *Keshav Chandra*, 1993 Supp (3) SCC 129] this Court dealt with a similar issue where the plaintiff was not in exclusive possession of property and had filed a suit seeking declaration of title of ownership. Similar view has been reiterated observing that the suit was not maintainable, if barred by the proviso to Section 34 of the Specific Relief Act. (See also *Gian Kaur* v. *Raghubir Singh* [*Gian Kaur* v. *Raghubir Singh*, (2011) 4 SCC 567 : (2011) 2 SCC (Civ) 366] .)
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> *57*. In view of the above, the law becomes crystal clear that it is not permissible to claim the relief of declaration without seeking consequential relief.
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> *58*. In the instant case, the suit for declaration of title of ownership had been filed, though Respondent 1-plaintiff was admittedly not in possession of the suit property. Thus, the suit was barred by the provisions of Section 34 of the Specific Relief Act and, therefore, ought to have been dismissed solely on this ground. The High Court though framed a substantial question on this point but for unknown reasons did not consider it proper to decide the same."

18. In the case of **Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust, Virudhunagar (supra)**, Hon'ble Supreme Court has observed that where the plaintiff therein was not in possession of the suit property and claiming only declaratory relief, ought to have claimed relief of recovery of possession and it was held that Trial Court had not committed any error in dismissing the suit observing that the plaintiff

has filed the suit for only declaration without the relief for recovery of possession, to be not maintainable.

19. Learned counsel for plaintiff referring to decisions of other Hon'ble Courts has argued that even if the exact relief was not written clearly in the plaint, the Court has the power to "mould" the relief to do complete justice between the parties. This argument can be acceptable only with limitation. A Court can adjust or mould a relief only when the basic case and the issue have been properly raised and both sides have understood and contested it. However, a Court cannot create a new case or grant a new relief that was never claimed.

20. In the case at hand, the plaintiff had sought relief only for ownership and possession of the house portion, not for the entire land of 18 dismil. By granting ownership of the whole land, the First Appellate Court granted relief that was never sought and not even discussed by the parties during trial. Therefore, the decree passed by the First Appellate Court goes beyond the pleadings and cannot be upheld.

21. During evidence, the plaintiff himself admitted that the defendant No. 1 was in possession of the entire 18 dismil of land at the time of filing the suit. This admission has a clear legal consequence. When the plaintiff is not in possession, he is required to sought for possession of the property along with any relief of declaration. If he omits to do so, the suit becomes legally defective under Section 34 of the Specific Relief Act. As discussed in preceding paragraphs, Hon'ble Supreme Court in **Anathula Sudhakar (supra)** and **Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust (supra)** has held that a suit for declaration alone, without a claim for possession, is not maintainable

when the defendant is in possession. Thus, in view of above, even if the plaintiff claims ownership, his own admission about possession being with the defendant No. 1 makes the declaration granted by the first appellate court ‘invalid’ in law.

22. Upon carefully perusal of the plaint and the evidence, it is clear that the case of the plaintiff was limited only to the house portion measuring 45 ft × 15 ft, described as *Chh, Ba, Nda, Fa*. The plaintiff never sought ownership or possession of the entire 18 dismil of land. The First Appellate Court, however, declared ownership for the entire area (marked *A, Ba, Sa, Da*), which was not part of the relief sought in plaint. Meaning thereby, the appellate court decreed more than what was actually sought for in the plaint and more than what was contested in evidence. Such a decree, being outside the scope of the pleadings and relief, causes prejudice to the party on other side and therefore cannot sustain in law.

23. Granting a relief that was never claimed in the plaint or contrary to law amounts to a substantial error of law under Section 100 of the Code of Civil Procedure. The First Appellate Court granted ownership of the entire 18 dismil land even though the plaintiff had not asked for such relief and was not in possession of that land. From the above precedent, it is clearly observed that when a plaintiff is not in possession, a declaration alone cannot be granted. Therefore, the judgment passed by learned First Appellate Court suffers from a legal error that goes to the root of the case.

24. After setting aside the incorrect part of the decree, only the house portion (45 ft × 15 ft) remains to be considered, as that is the only part mentioned in the plaint. The Trial Court had already examined the evidence and held that the plaintiff failed to prove ownership or possession by producing material evidence even of that house portion. The findings recorded by the Trial Court in this regard are based on evidence and are not shown to be unreasonable or perverse. Therefore, there is no valid reason to interfere with those findings in this second appeal. The decision of the Trial Court on this limited claim stands affirmed.

25. The law in this regard is well settled by the Supreme Court, as discussed above, that when a plaintiff is not in possession of the property but claims ownership, he must file a suit for declaration of title along with recovery of possession. A suit only for declaration or injunction, without seeking further relief of possession, is not maintainable.

26. In view of the foregoing discussion, this Court holds that the judgment and decree dated 24.09.2013 passed by the learned 2nd Additional District Judge, Sakti in Civil Appeal No. 1-A/2012, granting declaration of ownership over the entire 18 dismil (0.18 acre) of land, is not sustainable in the eye of law as it goes beyond the pleadings, relief sought and is contrary to the provisions of Section 34 of the Specific Relief Act.

27. Consequently, appeal is **allowed in part**, impugned judgment and decree are hereby set aside. Plaintiff is held entitled for the relief of

declaration of title of the house marked as *Chha, Ba, Fa, Nda* and its possession, as sought in relief and mentioned in map.

28. Decree be drawn up accordingly.

29. No order as to cost.

Sd/-

(Parth Prateem Sahu)
Judge

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