

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SECOND APPEAL No. 80 of 2006

1. Parsadi S/o Reetu Urao (Aadiwasi) deceased through legal heirs -

(A) Dashoda Bai Wd/o Parsadi, aged about 48 years, R/o Village Sarbahra, near Irrigation Colony, Tahsil Pendra Road, District Bilaspur (C.G.)

(B) Aasha Bai D/o Parsadi, aged about 30 years, R/o Village Sarbahra, near Irrigation Colony, Tahsil Pendra Road, District Bilaspur (C.G.)

(C) Usha Bai D/o Parsadi, aged about 28 years, R/o Village Sarbahra, near Irrigation Colony, Tahsil Pendra Road, District Bilaspur (C.G.)

(D) Nisha Bai D/o Parsadi, aged about 18 years, R/o Village Sarbahra, near Irrigation Colony, Tahsil Pendra Road, District Bilaspur (C.G.)

(E) Lakhan Lal S/o Parsadi, aged about 24 years, R/o Village Sarbahra, near Irrigation Colony, Tahsil Pendra Road, District Bilaspur (C.G.)

---- Appellants / Plaintiffs

Versus

1. Ganesh Prasad Kedia, S/o Kashi Prasad, aged about 47 years, R/o Village Gaurela, Tahsil Pendra Road, District Bilaspur (C.G.)

2. State of Chhattisgarh through Collector, Bilaspur (C.G.)

3. Nayab Tahsildar, Pendra Road, District Bilaspur (C.G.)

---- Respondents / Defendants

For Appellants/Plaintiffs	:	Shri S. D. Rajas, Advocate.
For Respondent No. 1	:	Shri Malay Kumar Bhaduri, Advocate.
For Respondent No. 2 & 3	:	Shri Arun Sao, Dy. A . G.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

26/10/2018

1. The substantial question of law involved, formulated and to be answered by the Court in this plaintiffs' second appeal is as under :-

“Whether appeal filed by respondent No. 1 was not competent and the findings on that appeal are perverse ?”

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 plaint before the trial Court]

(2.1) Plaintiffs'/appellants' suit for declaration of title over the suit land bearing Khasra No. 13 area 2 decimal based on perfection of their title by adverse possession was decreed by the trial Court by judgment and decree dated 26.02.1998. That decree was not questioned by respondent/defendant- State or its authorities by filing appeal. However, respondent No. 1 herein filed an appeal, though not a party to the suit, and sought leave to appeal against that judgment and decree by filing an application under Section 151 of CPC. By order dated 28.01.2006 that leave was granted and respondent No. 1 was permitted to file appeal and simultaneously on the same day the appeal was allowed by the First Appellate Court and the judgment and decree passed by the trial Court was set aside.

3. Feeling aggrieved with the order passed by the First Appellate Court, this second appeal under Section 100 of the Code of Civil Procedure has been preferred by the appellant/plaintiff in which substantial question of law has been framed and set out in the opening paragraph of the judgment.

4. Mr. S. D. Rajas, learned counsel appearing for the appellant / plaintiff submits that respondent No. 1 was admittedly not an aggrieved person and his interest is not affected and as such, the appeal framed and filed was not maintainable at his behest and the First Appellate Court has committed illegality in permitting respondent No. 1 to file appeal and in granting the appeal, therefore, the impugned judgment and decree deserves to be set aside.

5. Mr. Malay Kumar Bhaduri, learned counsel appearing for respondent No. 1 supports the impugned judgment & decree and submits that the right of respondent No. 1 was prejudicially affected by the judgment and decree passed by the trial Court and, therefore, the First Appellate court has rightly permitted him to file appeal and rightly allowed the appeal and this second appeal deserves to be dismissed.

6. Mr. Arun Sao, learned Deputy Advocate General appears for respondent No. 2 and 3, supports the impugned decree and submits that the First Appellate Court has rightly set aside the decree of the trial Court.

7. I have heard learned counsel for the parties, considered their rival

submissions made hereinabove and went through the record with utmost circumspection.

8. Undisputedly, respondent No. 1 was not a party to the suit filed by the plaintiffs. Upon passing of the judgment and decree by the trial Court in favour of the plaintiff/appellant, he moved an application under Section 151 of CPC for permitting him to file an appeal, which was granted by the First Appellate Court and ultimately allowed the appeal.

9. The short question for consideration would be whether respondent No.1 was entitled to maintain first appeal with the leave of the Court having appealable legal right in the subject-matter.

10. It is well-settled law; right of appeal is not a natural or inherent right. It is well-settled that an appeal is a creature of statute and there is no such right to file an appeal unless it is given clearly and in express terms by a legislation.

10.1 In M. Ramanarain Pvt. Ltd. v. State Trading Corporation of India Ltd.¹, the Supreme Court held as under:--

"16. The right to prefer an appeal is a right created by statute. No party can file an appeal against any judgment, decree or order as a matter of course in the absence of any suitable provision in some law conferring on the party concerned the right to file an appeal against any judgment, decree or order."

10.2 In Dayawati v. Inderjit², speaking for the Supreme Court, Hidayatullah, J. stated as under:--

¹ (1983) 3 SCC 75

² AIR 1966 SC 1423

"10.....An appeal has been said to be 'the right of entering a Superior Court, and invoking its aid and interposition to redress the error of the Court below', the only difference between a suit and an appeal is that an appeal 'only reviews and corrects the proceedings in a cause already constituted but does not create the cause'."

10.3 As a general principle of law, however, before an appeal can be filed, two conditions must be satisfied:--

(i) The subject-matter of appeal must be a 'decree', i.e., a conclusive determination of "the rights of the parties with regard to all or any of the matters in controversy in the suit"; and

(ii) The party appearing must have been adversely affected by such determination.

Thus, only a party to a suit/application adversely affected by a decree or any of his representatives-in-interest may file an appeal. But, a person who is not a party to a decree or order may, with the leave of the Court, prefer an appeal from such decree or order if he is either bound by the decree or order or is aggrieved by it or is otherwise prejudicially affected by it.

11. Generally speaking, a decision cannot be said to adversely affect a person unless it will operate as res judicata against him in any future suit. In order to decide whether a decision will operate as res judicata and will thus adversely affect a party, the substance of the judgment and decree, and not the form thereof must be considered. The question whether a party is adversely affected by a decree is a question of fact to be determined in each case according to its particular circumstances.

12. In the leading decision in Adi Pherozshah Gandhi v. H.M.

Seervai³, speaking for the majority, Mitter, J. stated:--

"Generally speaking, a person can be said to be aggrieved by an order which is to his detriment, pecuniary or otherwise, or causes him some prejudice in some form or other. A person who is not a party to a litigation has no right to appeal merely because the judgment or order contains some adverse remarks against him. But, it has been held in a number of cases that a person who is not a party to a suit may prefer an appeal with the leave of the Appellate Court and such leave would not be refused where the judgment would be binding on him under Explanation VI to Section 11 of the Code of Civil Procedure."

13. The Supreme Court in the matter of Smt. Jatan Kanwar

Golcha v. M/s. Golcha Properties Private Ltd. (In Liquidation)⁴,

has held as under:--

"3.....In our opinion, apart from Rule 130 to which reference has been made by the High Court, the Official Liquidator as well as the learned Company Judge were bound by the rules of natural justice to issue a notice to the appellant and hear her before making the order appealed against. If there was default on their part not following the correct procedure it is wholly incomprehensible how the appellant could be deprived of her right to get her grievance redressed by filing an appeal against the order, which had been made in her absence and without her knowledge. It would be a travesty of justice if a party is driven to file a suit, which would involve long and cumbersome procedure when an order has been made directly affecting that party and redress can be had by filing an appeal, which is permitted by law. It is well-settled that a person who is not a party to the suit may prefer an appeal with the leave of the Appellate Court and such leave should be granted if he would be prejudicially affected by the judgment."

³ (1970) 2 SCC 848

⁴ (1970) 3 SCC 573

14. Likewise, the Supreme Court in the matter of **State of Punjab (now Haryana) and others v. Amar Singh and another**⁵, has held as under:--

"84. Firstly, there is a catena of authorities, which following the doctrine of Lindley, L.J., In re : Securities Insurance Co., (1894) 2 Ch 410, have laid down the rule that a person, who is not a party to a decree or order may with the leave of the Court, prefer an appeal from such decree or order if he is either bound by the order or is aggrieved by it or is prejudicially affected by it. As a rule, leave to appeal will not be refused to a person, who might have been made ex nomine, a party--see: Province of Bombay v. W.I. Automobile Association, AIR 1949 Bom. 141; Heera Singh v. Veerka, AIR 1958 Raj 181 and Shivaraya v. Siddamma, AIR 1963 Mys. 127; Executive Officer v. Raghavan Pillai, AIR 1961 Ker 114, In re: B, an Infant, (1958) 1 QB 12; Govinda Menon v. Madhavan Nair, AIR 1964 Ker 235."

15. Finally, in the matter of **Hardevinder Singh v. Paramjit Singh and others**⁶, it has been held by the Supreme Court that a person whose legal right is prejudicially or adversely affected by a decree can prefer appeal under Section 96/100 of the CPC against that decree.

16. From the above general principles, it can be said that the following persons may prefer an appeal if his/her legal right is affected:-

(i) A party to the suit/application who is aggrieved or adversely affected by the decree/order, or if such party is dead, his legal representatives;

(ii) A person claiming under a party to the suit or a transferee of the interest of such party, who, so far as such interest is concerned, is bound by the

⁵ AIR 1974 SC 994

⁶ (2013) 9 SCC 261

decree/order, provided his name is entered on the record of the suit/application;

(iii) A guardian ad litem appointed by the Court in a suit by or against a minor or a lunatic;

(iv) Any other person, with the leave of the Court, if he is adversely affected by the decree/order.

17. At this stage, it would be appropriate to notice the application filed by respondent No. 1 under Section 151 of CPC :-

न्यायालय चतुर्थ अतिरिक्त जिला न्यायाधीश, बिलासपुर (म०प्र०)

गणेश प्रसाद केडिया आ०-काशी प्रसाद, आयु-47 वर्ष, साकिन-
ग्राम गौरला, तहसील-पेण्डरारोड, जिला-बिलासपुर (म०प्र०)

.....आवेदक/अपीलार्थी

विरुद्ध

01. परसादी आ० रितु, जाति-नाई, आयु लगभग-60 वर्ष, निवासी-ग्राम सारबहरा सिंचाई नगर के पास, तहसील-पेण्डरारोड, जिला-बिलासपुर, (म०प्र०)
02. म०प्र० शासन द्वारा जिलाध्यक्ष (म०प्र०)
03. नायब तहसीलदार पेण्डरारोड, बिलासपुर (म०प्र०)

.....अनोवदकगण/उत्तरवादीगण

आवेदन-पत्र अंतर्गत धारा-151 व्यवहार प्रक्रिया संहिता

आवेदक/अपीलार्थी निम्नानुसार निवेदन प्रस्तुत करता है:-

01. यह कि आवेदक द्वारा माननीय न्यायालय के समक्ष अधीनस्थ न्यायालय द्वारा व्यवहार वाद क्रमांक-184-ए/97 पक्षकार परसादी विरुद्ध म०प्र० शासन एवं एक अन्य में पारित निर्णय एवं डिक्री दिनांक-26/02/1998 के विरुद्ध अपील प्रस्तुत करना चाहता है ।
02. यह कि विवादित भूमि राजमार्ग क्रमांक-22 से लगी हुई है एवं अनावेदक क्रमांक-01 परसादी ने राजमार्ग की भूमि पर कब्जा करके अधीनस्थ न्यायालय के समक्ष तथ्यों को छुपाकर अपने पक्ष में डिक्री प्राप्त कर लिया है ।
03. यह कि अधीनस्थ न्यायालय द्वारा पारित निर्ण एवं डिक्री के परिप्रेक्ष्य में अनावेदक परसादी ने राजमार्ग पर कब्जा कर लिया है जिससे आवागमन में असुविधा हो रही है तथा भविष्य में नगर विस्तार होने पर भी असुविधा होगी । इसलिये आवेदक अधीनस्थ न्यायालय द्वारा पारित उक्त निर्णय एवं डिक्री के विरुद्ध माननीय न्यायालय के समक्ष अपील प्रस्तुत करना चाहता है ।

अतः प्रार्थना है कि न्यायहित में आवेदक/अपीलार्थी को अधीनस्थ न्यायालय द्वारा पारित निर्णय एवं डिक्री के विरुद्ध अपील प्रस्तुत करने की अनुमति प्रदान की जाये ।

बिलासपुर
दिनांक-22/07/1998

सही/-
आवेदक/अपीलार्थी

सही/-
अधिवक्ता
वास्ते आवेदक/अपीलार्थी

A careful perusal of the aforesaid application would show that respondent No. 1 simply made an application that since one of the plaintiff Parsadi has encroached upon the government land and it is likely to cause inconvenience to the general public therefore, he may be allowed to file an appeal. The said application was considered and granted by the First Appellate Court by order dated 28.01.2006. The First Appellate Court has simply held that if a person is not a party to the suit then with the leave of the Court, appeal can be preferred as noticed and held hereinabove. It is well settled that if a person whose legal right is prejudicially or adversely affected by a decree, is a person aggrieved by such decree, can maintain an appeal against that decree.

18. The word "legal right" has been defined by the Supreme Court in the matter of Ayaubkhan Noorkhan Pathan v. State of Maharashtra⁷ and it has been held as under:-

"10. A 'legal right', means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, 'person aggrieved' does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardised."

⁷ (2013) 4 SCC 465

19. The question is whether the defendant No. 1's legal right is said to have been affected by the decree of the trial Court granted in favour of the plaintiff. The respondent No. 1 has not stated in his application filed under Section 151 of the CPC and extracted hereinabove that any of his legal right or interest is affected by the decree passed by the trial Court. Merely because it would cause inconvenience to the general public, it cannot be held that respondent No.1 is a person whose legal right is adversely affected or jeopardized by decree of the trial Court. As such, the respondent No. 1 has failed to establish that his legal right is prejudicially or adversely affected by the judgment and decree of the trial Court. The First Appellate Court has also failed to appreciate the fact that the existence of the power and jurisdiction is different from its exercisability and further absolutely unjustified in granting leave to file appeal without finding and recording that any of legal right of respondent No.1 has affected by decree of the trial Court.

20. As a fall out and consequence of the aforesaid discussion, the judgment and decree passed by the First Appellate court is hereby set aside and that of the trial Court is restored. Liberty has been sought by respondents No.2 and 3 to proceed in accordance with law. Needless to say, no liberty is required for that. Parties are always at liberty to proceed in accordance with law.

21. Accordingly, the second appeal is allowed to the extent indicated hereinabove. No cost(s).

22. A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

Priyanka



HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No.80 of 2006

Appellants : Parsadi S/o Reetu Urao (Aadiwasi)
deceased through legal heirs

Versus

Respondents: Ganesh Prasad Kedia and others

HEAD NOTE

Appeal under Section 96-100 of the Code of Civil Procedure can also be preferred by a person whose legal right is prejudicially affected by a decree passed by the Court.

जिस व्यक्ति का विधिक अधिकार न्यायालय द्वारा पारित डिक्री से प्रतिकूल तौर पर प्रभावित होता है, उसके द्वारा सिविल प्रक्रिया संहिता की धारा 96-100 के अन्तर्गत अपील भी जा सकती है।