

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.521 of 2014**

- Vijay Kumar, Son of Mohit Ram, aged about 37 years, R/o.
Village Birgaon, Tahsil Nawagaon, District Janjgir Champa (CG)

---- Appellant**Versus**

1. Jaleshwar Das, S/o. Kanhaiya Das, aged about 60 years, R/o.
Village Birgaon, Tahsil Nawagaon, District Janjgir Champa (CG)
2. State of Chhattisgarh, through Collector, Janjgir, District Janjgir
Champa (CG)

---- Respondents

For Appellant	: Shri AP Sharma, Advocate.
For Respondent No.1.	: Shri Paras Mani Shrivastava, Advocate.
For Respondent No.2	: Ms. Pushpa Dwivedi, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment On Board****24/06/2015**

Heard on the question of admission.

2. This is a second appeal. First appeal has been dismissed by the First Appellate Court in Civil Appeal No.12A/13 vide judgment dated 14.10.2014 whereby and whereunder, the First Additional District Judge, Janjgir-Champa, dismissed the appeal filed on behalf of the appellant and affirmed the judgment and decree dated 23.3.2013 passed by Civil Judge Class-2, Nawagarh in Civil Suit No.14A/2007, whereby the trial Court allowed the suit filed by present respondent No.1 Jaleshwar Das and held that the suit land belongs to plaintiff/respondent No.1 and he is holding possession and title of the suit land. By declaring the title with the plaintiff/respondent No.1, the trial Court has also permanently restrained the appellant/defendant Vijay Kumar from making any activity in the suit land.

3. Against the concurrent findings of the both the Courts below, the appellant preferred second appeal and has taken the ground that the trial Court has wrongly held that the appellant has not produced any document, the trial Court erred in holding that burden to prove is upon the appellant that how he has acquired the suit land, the trial Court also erred in holding that the land in dispute belongs to respondent No.1 as no demarcation report is furnished by the respondent No.1/plaintiff before the trial Court. The appellant prayed that the appeal may be admitted as the substantial question of law exists and the appeal may be heard on its merits and after allowing the appeal, judgment passed by the Court below may be set aside in the interest of justice.

4. Heard learned counsel for the appellant on admission under Order 41 Rule 11 read with Order 42 Rule 1 of the Code of Civil Procedure, 1908 (for short 'the Code').

5. Learned counsel for the appellant supported the ground taken in the second appeal and submitted that substantial question of law needs to be formulated along with the admission of the appeal. He further submitted that as the substantial question of law is involved as mentioned in the memorandum of appeal, the appeal may be admitted and the appeal may be disposed of accordingly.

6. Records of the Courts below are available. For appreciating the arguments advanced on behalf of the appellant of the second appeal, I have perused the material available in the records of the Courts below.

7. After perusal of the entire facts goes to show that by oral and documentary evidence, respondent No.1/plaintiff has duly proved before the trial Court that he is the title holder and in possession of the suit land.

8. On the other hand, the appellant/defendant had taken a plea that he has purchased the land from some Kottaru Das Panika through registered sale deed. No any revenue document or other evidence adduced regarding the facts as to how Kottaru Das became the owner of the suit land and how he was in a position to sell it out to defendant No.1/appellant. These facts have to be proved by the appellant as he has taken the plea in his written statement and onus was him to prove this fact. So far as the onus regarding ownership and possession of the suit land are concerned, the plaintiff/respondent No.1 duly proved he was not required to discharge the onus to prove and the other part to prove how Kottaru Das or any other became the owner of the suit land and acquired the authority to sell the land to the appellant was on the appellant and not with the plaintiff/respondent No.1, thereby the trial Court rightly allowed the suit and declared the title with the plaintiff, the defendant was permanently restrained from any obstruction in the possession of the plaintiff. The appellate Court while hearing the appeal affirmed the judgment and decree passed by the trial Court.

9. After appreciation of the entire facts, this Court also is of the considered view that the appellant has not discharged his onus and proved valid source regarding title and possession of some Kottaru Das or any other. This onus was with the appellant. He had opportunity to prove this facts by adducing revenue documents along with oral evidence. By not discharging the onus, the appellant failed to prove that he is holding the valid title and the appellant also failed to prove that he was in possession of the suit land. On the other hand, respondent No.1 duly proved his title and possession before the trial Court. Consequently, the trial Court passed the judgment and decree

in favour of the respondent No.1/plaintiff which was subsequently affirmed by the appellate Court after the detailed appreciation of the facts of the case which requires no interference.

10. On due consideration, this is not a fit case for admission and for hearing any substantial question of law. Consequently, the appeal is dismissed in motion stage itself under the provisions of Order 41 Rule 11 read with Order 42 Rule 1 of the Code.

No order as to costs.

(C.B.Bajpai)
JUDGE