

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 256 of 2015**

1. Harprasad S/o Motilal, Aged About 53 years, By Caste Dhuri, R/o Village Bodri, Tahsil Belha, Distt. Bilaspur, (Chhattisgarh)
2. Jagdish Prasad S/o Jugal Prasad Satnami R/o Village Dhodki, Tahsil Belha, Distt. Bilaspur, (Chhattisgarh)
3. Abdul Hussain S/o Shakir Hussain, R/o Khaparganj, Tahsil & Distt. Bilaspur, (Chhattisgarh)

---Appellants**Versus**

1. State of Chhattisgarh Through The Collector, Bilaspur, Distt. Bilaspur, Chhattisgarh
2. Sub Divisional Officer, (Revenue) Belha, Distt. Bilaspur, (Chhattisgarh)
3. Tahsildar, Belha, District Bilaspur, (Chhattisgarh)
4. Ghasiram S/o Mohanlal, Aged About 57 Years Head of The Hindu Undivided Family Consisting of Four Brothers And Widow- Mother
5. Babulal S/o Sunderlal Aged About 72 Years
6. Mewalal S/o Harprasad, Aged About 65 Years Representing As Head of The Hindu Undivided Family which Consists of Brother's Widow Shanti Bai, S/o Chandradhar And D/o Ganga Bai. Respondents 4, 5 and 6 above all by Caste Brahmin, R/o Village Bodri, Tahsil Belha, Distt. Bilaspur, (Chhattisgarh)

---- Respondents

For Appellants	:	Dr. N.K. Shukla, Senior Advocate with Shri Sushil Dubey and Ms. Mukta Tripathi, Advocates
For Respondent/State	:	Shri U.N.S. Deo, Government Advocate.

**HON'BLE SHRI NAVIN SINHA, CHIEF JUSTICE &
HON'BLE SHRI P. SAM KOSHY, J.**

Order On Board

Per NAVIN SINHA, C.J.

7/5/2015

1. I.A.No.1/2015 has been filed to condone 2 days delay in filing the appeal. Considering the duration, delay is condoned.
2. The present appeal arises from order dated 26.2.2015 dismissing Writ Petition (C) No. 1737 of 2013, simultaneously directing that the Collector, Tehsildar and Sub-Division Officer shall take steps to recover possession, correct the revenue record mentioning the name of the State as owner of the property and remove possession of any individual who is found to be in possession of the property after which the State would put the lands in proper government use.
3. Learned Senior Counsel, Dr. Shukla for the Appellants submits that in Civil Suit No.7-A of 1992 filed by the Appellants against the State with regard to the subject property, by judgment and decree dated 4.10.1993, the Appellants were held to be in lawful possession and occupation of the subject lands. The possession therefore can be recovered only in accordance with law.
4. Respondents 4 to 6 subsequently filed Civil Suit No.245-A of 2002 against the Appellants contending that judgment and decree dated 4.10.1993 was not binding on them as they were not party to the same. The State was not made party to the suit. The suit was dismissed. Second Appeal No.412 of 2007 filed by Respondents 4 to 6, was also dismissed. But in the Civil Suit a finding was given that the Appellants had obtained judgment and decree in Civil Suit No.7-A of 1992 by committing fraud. The Appellants preferred

Second Appeal No.260 of 2007 against the same which has been dismissed also.

5. Learned Senior Counsel submits that any finding of fraud against the Appellants in the suit filed by Respondents 4 to 6 is not binding as the State was not a party in the suit. With regard to confirmation of the findings in Second Appeal No. 260 of 2007 preferred by the Appellants, it is submitted that the findings are perverse.

6. Learned Counsel for the State submitted that if the allegations are of obtaining a judgment and decree by fraud, unless and until it is assailed in accordance with law, this Court in the present appeal cannot reexamine the issue for fraud which unravels every benefit or claim.

7. We are in concurrence with the submissions on behalf of the Respondents that once there is a finding of obtaining a Court order on basis of fraud, it unravels everything and any benefit obtained thereunder automatically becomes unsustainable. The question for recovery of possession by the State in accordance with law as alleged does not arise if the original possession itself was illegal. The State has the right to resume possession in the manner as directed by the Single Judge. If the Appellants opine that the order in Second Appeal No. 260 of 2007 was erroneous, it is for them to pursue remedies in accordance with law. The findings in the appeal cannot be collaterally challenged in the present appeal.

8. The appeal is dismissed.

(Navin Sinha)
CHIEF JUSTICE

(P. Sam Koshy)
JUDGE

