

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****SA No. 227 of 2015**

1. Smt. Subhadra W/o Ramkumar Vaishnav Aged About 57 Years
2. Ramkumar Vaishnav S/o Ram Manohar Das Vaishnav Aged About 67 Years

Both R/o Village Baloda, Patwari Halka No. 154, RC Gidhori, Tahsil Kasdol, P.S. Gidhori, Civil & Revenue District Raipur Now Baloda Bazar Bhatapara Chhattisgarh

---- Appellants**Versus**

1. Smt. Pitar Bai W/o Bhagwat Marar
2. Bhagwat S/o Lakhram Marar
3. Puniram S/o Gajanand Marar
4. Joidha S/o Jidhram Marar
5. Kirtan S/o Sukhram Marar Aged About 45 Years

All are R/o Village Baloda, Patwari Halka No. 154, Rc Gidhori, Tahsil Kasdol, P.S. Bilaigarh (now Gidhori), Civil & Revenue District Raipur Now Baloda Bazar Bhatapara Chhattisgarh

6. State Of Chhattisgarh Through Collector, District Baloda Bazar Bhathapara Chhattisgarh

---- Respondents

For appellants	: Mr. Arun Kumar Agrawal with Mr. Ashok Das Vaishnave & Mr. Viprasen Agrawal, Adv.
For Respondent No. 6	: Mr. Roshan Dubey, Panel Lawyer
For Respondents 3 and 4	: None though represented.
For Respondents No. 1, 2 & 5	: None though served/refused to accept notice.

Judgment**14/09/2015**

1. Instant second appeal under Section 100 of the Civil Procedure Code (in brevity 'Code') is directed against the judgment and decree dated 25-3-2015 passed by the First Additional District Judge, Baloda Bajar, CG in Civil Appeal No. 05-A/2015 whereby and whereunder the judgment and decree dated 1-10-2010 passed by the Civil Judge Class II, Kasdol in Civil Suit No. 70-A/2008 preferred by defendant No. 4/appellant has been set aside.

2. Fact of the case in brief necessary for disposal of this appeal are that the plaintiffs/ appellants filed a civil suit against the defendants/ respondents arraying State as proforma party for declaration and permanent injunction for any interference of the defendants in the suit land. The trial Court after a close scrutiny of the evidence led and material placed on record, allowed the suit and restrained the defendants not to commit any interference on the suit land by granting perpetual injunction. As per undisputed facts, the suit land belongs to State and in Patwari paper, it is mentioned as grass land and the plaintiffs/appellants are encroacher and they constructed house and doing other activities and agriculture. Against said decree, the defendant No. 4/respondent No. 4 preferred first appeal before the 1st Additional District Judge, Baloda Bajar. The first appellate court after hearing the matter held that as the State was necessary party, it had to be given notice under Section 80 of the Code before filing a suit and also relief was required to be sought from the State as the State was owner and title holder of the suit land. The land in question was not given to plaintiffs on any type of lease and since the land in question was grass land and government land, hence every member of the village is entitled to use it as per law unless the same land is not converted for any other activity and given to anyone for any purpose. Learned first appellate court allowed the first appeal and set aside the judgment and decree of the trial Court.
3. Against the judgment and decree passed by the first appellate court, the plaintiffs have preferred instant second appeal on the ground that the State was not made party by the appellant of first appeal. The order passed by the trial Court was well reasoned order. The present appellants are in possession of the suit land though the government land is recorded as grass land. Defendant No. 4 was not in possession of the suit land. State can only remove encroachment. Defendants were not entitled to remove the alleged encroachment. This is a dispute between the State and the encroacher. Other party cannot file appeal. They are not having any locus. Also due to not arraying State as party before the first appellate court, the judgment and decree passed by the the first appellate court is based on wrong

appreciation. The present appellants were in possession of the suit land since long. They had also prayed for issuance of lease from the State and the same was pending that is why the trial Court rightly passed the order for perpetual injunction. Since the State was not making any objection in possession of the present appellants therefore they made State as formal party before the trial Court and the present appellants also took an objection as mentioned in para 7 of the judgment of the first appellate court in this regard. They have taken objection that the State is a necessary party and as the State is not made party before the first appellate court, the appeal is not maintainable. The first appellate court has not passed reasonable or speaking order. Consequently, the instant second appeal be admitted for consideration and also disposed of on its merit and the relief prayed by the appellants be granted. The judgment and decree passed by the first appellate court be set aside.

4. I have heard learned counsel for the appellants on admission under Order 41 Rule 11 read with Order 42 Rule 1 of the Code and perused the judgment and decree and records of both the courts below.
5. Learned counsel for the appellants supported the grounds taken in the instant second appeal and submitted that the judgment and decree passed by the first appellate court is perverse hence substantial question of law needs to be formulated along with admission of appeal. He further submitted that as they were in possession since long though on the land belongs to the State recorded as grass land, the defendants have no locus and as the State was not making any objection regarding possession of the plaintiffs, State was made formal party. This was a dispute between the State and the plaintiffs. Others have no locus to interfere with the possession. Prayer for lease was pending before the State. Title was not required to be proved for issuance of perpetual injunction as on the basis of possession since long, they prayed for perpetual injunction. Since the trial Court rightly accepted and passed the decree hence appeal may be admitted for consideration and accordingly disposed of.
6. A perusal of entire facts goes to show that admittedly, land in question was recorded in the name of State as grass land. No lease was

granted to plaintiffs. State was a formal party. No relief was claimed from the State. No notice under Section 80 of the Code was given to the State before filing civil suit. State was made party by the order of the Court dated 27-9-2001. No any document regarding proceedings before the State for consideration of issuance of any lease deed is filed before the trial Court. Merely on the basis of document Ex. P-2, Khasra Panchshal, copy of the Register encroachment Ex. P-3, learned trial Court held that plaintiffs are in possession of the suit land and the trial court further after appreciation directed that defendants be restrained for any interference in the suit land.

7. The first appellate court in a detailed appreciation held that as the land in question is grass land and government land, every member of the village under Section 237 of the the CG Land Revenue Code is entitled to use it. The land in question was not given on lease to the plaintiffs thereby there is no allotment regarding title or shadow of title. The first appellate court set aside the judgment and decree of the trial Court. Learned counsel for the appellants prayed that substantial question of law needs to be formulated regarding perversity of the judgment and decree passed by the first appellate court.
8. For hearing a second appeal, formulation of substantial question of law is necessary. The substantial question of law proposed and submitted in the memo of appeal cannot be held to be substantial question of law. The judgment and decree passed by the first appellate court is based on sound principles of law. The plaintiffs failed to demonstrate the authority for which the orders for perpetual injunction be passed. The first appellate court in a detailed appreciation held that the judgment and decree passed by the trial Court is not sustainable.
9. It is settled law that this Court cannot proceed to hear a second appeal without there being any substantial question of law involved in the appeal. Existence of substantial question of law is the *sine qua non* for the exercise of the jurisdiction under the amended Section 100 of the Code. The findings recorded by the first appellate court in the case are essentially finding of facts. Learned counsel appearing for the appellants failed to point out any substantial question of law which

may arise for determination in the case. In the absence of any substantial question of law arises for determination of this Court, this Court has no option but to dismiss the appeal.

10. In view of above, since no substantial question of law arises for determination in the second appeal, this is not a fit case for admission. Consequently, the appeal is dismissed at motion stage itself under the provisions of Order 41 Rule 11 read with Order 42 Rule 1 of CPC.
11. No order as to costs.

Sd/-

Chandra Bhushan Bajpai
Judge