

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 425 of 2013

1. Rohit Kumar S/o Madan, aged about 55 years, R/o Gugiyabod, Tah. Jaijaipur, Distt. Janjgir-Champa C.G.
2. Firatram S/o Parmanand, aged about 43 years, R/o Gugiyabod, Tah. Jaijaipur, Distt. Janjgir-Champa C.G.
3. Mangal Das S/o Sitaram, aged about 68 years, R/o Gugiyabod, Tah. Jaijaipur, Distt. Janjgir-Champa C.G.
4. Daulal S/o Sitaram, aged about 63 years, R/o Gugiyabod, Tah. Jaijaipur, Distt. Janjgir-Champa C.G.
5. Sukhiram S/o Budhram, aged about 42 years, R/o Gugiyabod, Tah. Jaijaipur, Distt. Janjgir-Champa C.G.

---- Appellants

Versus

1. Roopdas S/o Ramcharan (Died), Through- Nonibai, aged about 75 years, W/o Late Roopdas, R/o Gugiyabod, Tah. Jaijaipur, Distt. Janjgir-Champa C.G.
2. State of Chhattisgarh through Collector, Janjgir-Champa C.G.

---- Respondents

For Appellants – Shri Parag Kotecha, Advocate.
For Respondent No.2 – Shri Roshan Dubey, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment on Board

03/08/2015

1. Heard on admission.
2. The instant second appeal filed under Section 100 of the CPC is directed against the judgment and decree dated 29-07-2013 passed by the First Additional District Judge, Sakti, District Janjgir-Champa, C.G., in Civil Appeal No. 17A/2012 whereby and whereunder the plaintiffs'/appellants' appeal has been dismissed affirming the judgment and decree dated 28-09-2011 passed by Civil Judge Class II, Jaijaipur, District Janjgir-Champa, C.G., in Civil Suit No.24A/2010.
3. Facts in brief necessary for disposal of this appeal are that the

appellants/plaintiffs filed a civil suit before the trial Court for declaring them as owner of the suit land also for confirmation of the possession as they are in possession on mutual oral transfer with the grand fathers of both the parties since 1940. The trial Court on close scrutiny of evidence led, submissions made and material placed on record, dismissed the suit vide its judgment and decree dated 28-09-2011 and held that the plaintiffs failed to prove that they are having title for the suit land and acquired status of the owner of the suit land as they are in possession since 1940. Before the trial Court, it was admitted fact that in the suit land name of respondent No.1 recorded as owner inheritance.

4. Against the said judgment and decree passed by the trial Court, the plaintiffs preferred first appeal. The first appellate Court after re-appreciating the entire evidence available on record, dismissed the appeal and affirmed the findings recorded by the trial Court.

5. Against the said judgment and decree passed by the first appellate Court, the plaintiffs have preferred this second appeal inter alia on the ground that since 1940 they are in possession of the suit land received on oral mutual transfer happened with forefathers of both the parties; as this is an admitted position, the trial Court erred in holding that they had not acquired the title and also erred in holding that the appellants/plaintiffs are not liable to be declared as title holder for the suit land. It is further submitted that as there are clear admission by the respondent No.1 that he is not in possession of the suit property, the appellants perfected their title by way of adverse possession. The trial Court had not appreciated the evidence surfaced in this behalf and by dismissing the suit and the first appeal both the Courts below committed error of law. There is no necessity to implead the law, the Court has to appreciate the correct law and on the basis of which appropriate judgment and decree be passed. By filing the instant memo of appeal it is prayed that substantial question of law is involved, hence, after forming substantial question of law, the

appeal may be admitted and heard finally. It is further prayed that the judgment and decree passed by the learned appellate Court and the trial Court be set aside and the relief prayed on behalf of the plaintiffs/appellants be awarded in favour of the appellants.

6. I have heard the counsel appearing for the appellants on admission under Order 41 Rule 11 read with Order 42 Rule 1 of the CPC and perused the judgments and decree including records of the Courts below.

7. Learned counsel appearing for the appellants supported the grounds taken in the second appeal and submitted that substantial question of law needs to be formulated along with admission of the appeal. He would further submit that as the substantial question of law is involved as mentioned in the memo of appeal, the appeal may be admitted for hearing and be disposed of accordingly.

8. Learned counsel for the appellants submitted that since 1940 the appellants are in possession of the suit land on the basis of the oral transfer of the land between the grand fathers of the parties, though in the revenue papers name of respondent No.1 is recorded as owner of the suit land, but possession was proved with the order passed by Tahsildar in revenue case No.9/2008-2009 (Ex.-P/1). Learned counsel further submitted that as per provisions of Section 250 Sub-section (1-a)(b), within 2 years from the date of dispossession the alleged bhumiswami ought to pray for reinstatement of improper dispossession, respondent No.1 filed a revenue case before the Tahsildar much after the time prescribed for the reinstatement thereby both the judgments are against the provisions of Section 250 (1-a)(b) of the C.G. Land Revenue Code, 1959 and on this point the learned counsel prayed that substantial question of law may be formulated and the appeal may be heard on its merit.

9. A careful perusal of the evidence adduced by the parties before the trial Court, goes to show that the suit land till trial was recorded in the name of respondent No.1 as through inheritance; no any papers regarding possession of

the appellants were adduced before the trial Court which shows the possession of the appellants but for the revenue case filed by the respondent No.1 that the appellants are in possession; no any document regarding title in favour of the appellants were adduced before the trial Court, no any document for alleged transfer was adduced before the trial Court in the entire plaint, no any specific pleading regarding adverse possession was taken. Inter alia, it was case of the appellants that they had received the land in question on the mutual transfer from which land he received the suit and on transfer is not properly pleaded and proved; also there is no any document showing the possession of the appellants since 1940 on the basis of the alleged transfer of the land. It is also surfaced that the present appellants not filed any appeal against the order of the revenue Court. It is further note worthy that present appellants remained ex-parte before the revenue Court. It is further surfaced that though the present appellants filed their reply before the revenue Court, but therein there was no any specific reply/contention for the point that the said revenue proceedings are barred by limitation.

10. Upon considering the entire facts and settled position of law, it goes to show that in absence of any document proved regarding possession of the appellants on the suit land and on the basis of other abovementioned facts, both the Courts below dismissed the prayer made in the civil suit and also in the first appeal. As per the settled law, the appellants were to required to adduce the evidence and also prove their case on its own footing. In the absence of the evidence the trial Court and the first appellate Court held that the plaintiffs/appellants have not attained the status of landlord and they failed to prove regarding declaration of Landlord in the suit land. The limitation part regarding the filing of application by respondent No.1, before the trial Court, not pleaded neither contested; nor there was any appeal against such order. As argued substantial question of law regarding non-compliance of the period for

limitation for filing of the application for reinstatement of possession is not attracted for the instant second appeal.

11. Upon perusal of the entire facts, there is no any substantial question of law requires to be formulated for hearing of this second appeal.

12. 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 CPC. 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.

13. In view of above, since no substantial question of law arises for determination in the instant case, 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 the CPC.

14. No order as to cost.

Sd/-

(Chandra Bhushan Bajpai)
Judge