

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****SA No. 245 of 2015**

1. Kartikram S/o Bedram Dewangan Aged About 47 Years
 2. Ganga Prasad S/o Kapil Dewangan Aged About 58 Years
- Both R/o Ranipara, Purani Basti, Janjgir, Tahsil Janjgir, District- Janjgir-Champa, Chhattisgarh

---- Appellants**Versus**

1. Punabai Rathore W/o Mohan Lal Rathore Aged About 70 Years R/o Chitarpara, Ward No. 10, Janjgir, Tahsil Janjgir District- Janjgir-Champa, Chhattisgarh
2. Chandrika Rathore S/o Dhansai Rathore Aged About 70 Years R/o By-Pass-Road, Near Patel Typing, Janjgir, Tahsil Janjgir, District-Janjgir-Champa, Chhattisgarh
3. Dhanaram Patel S/o Khadhru Patel Aged About 75 Years R/o By-Pass-Road, Near Patel Typing, Janjgir, Tahsil Janjgir, District-Janjgir-Champa, Chhattisgarh
4. State Of Chhattisgarh Through : The District Collector, Janjgir, District Janjgir-Champa, Chhattisgarh

---- Respondents

For appellants	: Mr. Somnath Verma, Adv.
For Respondent No. 4/State	: Ms. Pushpa Dwivedi, Panel Lawyer
Other Respondents	: Not noticed.

Judgment**28/08/2015**

1. Instant second appeal under Section 100 of the Civil Procedure Code (in brevity 'CPC') is directed against the judgment and decree dated 31-1-2015 passed by 3rd Additional District Judge, Janjgir Champa, in Civil Appeal No. 68-A/2014 whereby and whereunder the plaintiffs' appeal has been dismissed affirming the judgment and decree dated 21-4-2014 passed by the 1st Civil Judge Class-II, Janjgir Champa in Civil Suit No. 25-A/2011.
2. Facts of the case in brief are that appellants/plaintiffs filed a suit before the trial Court for possession over the suit land. The trial Court on a close scrutiny of the evidence led and material placed on record dismissed the suit vide judgment and decree dated 21-4-2014 holding that since the appellants/plaintiffs failed to prove that the suit land is the ancestral property of the appellants/plaintiffs and therefore the plaintiffs are not entitled to get vacant possession from defendants No.1 to 3.
3. Against the judgment and decree dated 21-4-2014, the plaintiffs preferred

first appeal. The first appellate court after re-appreciating the entire evidence available on record dismissed the appeal and affirmed the judgment and decree passed by the trial Court. Against the order of the first appellate court, instant appeal has been filed on the ground that by proving Ex. P-1 demarcation report and also by oral evidence the plaintiffs proved that they are the owner and title holder of the suit land bearing Survey No. 4071/1. These pleadings are not rebutted by the defendants. They pleaded that they are the owner and title holder of Survey no. 4070. As they never claimed for any title or ownership for the suit land bearing No. 4071/1 hence it was not required by the plaintiffs to prove the title otherwise. As per defendants, they have not claimed to be owner of the suit land No. 4071/1. Hence both the courts below have committed error by rejecting the prayer of the plaintiffs. It is prayed on behalf of the appellants/plaintiffs that appeal may be admitted as substantial question of law exists in the appeal. It is further prayed that the appeal may be allowed and the judgment and decree of both the courts below 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 CPC and perused the judgments and decree including records of the courts below.
5. Learned counsel appearing for the plaintiffs 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. There is no dispute regarding title of plaintiffs over the suit land. He further submitted that substantial question of law as mentioned in the memo of appeal is involved. The appeal be admitted and disposed of accordingly.
6. After perusal of the entire case, it is found that besides Ex. P-1- demarcation report, no document was submitted before the trial Court. Maker of the document was also not examined. The plaintiffs claimed that they are owner/title holder of the suit land and it belongs to them as their ancestral property, but no document, entries in the revenue record and other evidence regarding mentioning of the name of either plaintiffs or their ancestors are produced or proved by the plaintiffs before the trial Court. If the plaintiffs are claiming that they are title holder and owner of the suit land bearing Survey No. 4071/1 the onus is on the plaintiffs to prove this fact by documentary evidence only. No oral evidence can hold the title and ownership in the present facts of the case. Maker of Ex. P-1 is also not examined thereby both the courts below have rightly held that title of the suit land is not proved by the plaintiffs. Merely because of the fact that the respondents are not

claiming any interest or title over Survey No. 4071/1, it cannot be held that the appellants/plaintiffs are owner or title holder of the suit land. Both the courts below rightly held the plaintiffs failed to prove the onus that the land belongs to them.

7. From perusal of evidence led and other material placed before the courts below, in the considered view of this court, both the courts below have not committed any illegality in appreciating the evidence adduced at the time of trial, also not committed any error of law while appreciating the pleading. There appears no substantial question of law requires to be formulated for hearing of the second appeal.
8. 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 both the Courts below 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.
9. 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.
10. No order as to costs.

Sd/-

Chandra Bhushan Bajpai
Judge