

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 131 of 2007

Sakun Bai D/o Sudhu Sahu, Karsa, Tahsil-Patan, District-Durg,
Chhattisgarh

---- Appellant

Versus

1. Jethuram S/o. Kartikram Sahu, R/O. Village Karsa, Tahsil Patan, Distt. -
Durg, CG.
2. State Of CG Through Collector, Durg, Tahsil-Durg, District-Durg,

---- Respondents

Shri Jitendra Gupta, counsel for the appellant/s.
Shri Ramakant Pandey, Panel Lawyer for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

13/01/2016

Heard on admission.

This appeal is directed against impugned judgment and decree dated 15/12/06 passed by the learned lower Appellate Court by which the learned lower Appellate Court has reversed the judgment decree of the Trial Court and granted decree in favour of plaintiff.

2. Learned counsel for the appellant argued that the suit filed by the plaintiff-Jethuram was not maintainable because, in substance, assailed legality and validity of order and proceedings of settlement carried out by the revenue authorities. He argued that the order of Tahsildar passed on 08/11/1995 and that of Sub-Divisional Officer on 30/03/02, are in essence, orders arising out of the settlement proceedings and therefore, there is a bar to filing of Civil Suit under Section 257-B of the M.P.Land Revenue Code. He submits that the issue with regard to reduction of the total area in plot / khasra number was specifically raised and subject matter of consideration before the Tahsildar. The order of the Tahsildar has the effect of alteration of settlement records and area of land comprised in various revenue khasra numbers. It is also argued that the

Tahsildar wrongly assumed the issue to be an issue of partition whereas the matter involved correction of settlement records. Thus, in the garb of partition, what has been done is that the area of land recorded in disputed khasra numbers has been changed.

3. The plaintiff filed a suit alleging that a joint family of Jethuram, Suduram and Ankalu owned certain lands and upon partition, each of them was entitled to 0.85 hectares. After death of Suduram, his share was received by his widow Dasro Bai. In the year 1973, Dasro Bai, Ankalu and plaintiff - Jethuram jointly sold land admeasuring 1.3 acres and some of their lands were submerged in the canal, in respect of which, they had received compensation. According to plaintiff, each of them were thus entitled to 29 dismil of land. It was his case that without affording him any opportunity of hearing, in the revenue records, 34 dismil area of land was recorded in favour of plaintiff thereby reducing 5 dismil of land from his share. Learned lower Appellate Court held that in the year 1973, land was not only sold by Jethuram but also by Ankalu and Dasro Bai, widow of Suduram. Therefore, it was not proper that the land should be reduced only from the share of Jethuram.

4. The findings are of fact based on appreciation of oral and documentary evidence on record and are neither perverse nor suffer from any patent illegality or contrary to any evidence on record.

The order passed by the Tahsildar and thereafter by the Sub-Divisional Officer in appeal are not orders of settlement proceedings but are orders arising out of dispute of partition between the parties. The Tahsildar has only examined the records to find out as to what was the extent of share to which each of the branch of the family was entitled to receive. The order does not *per se* appears to be an order passed in settlement proceedings. The competent authority to carry out settlement proceedings is the Sub-Divisional Officer and not the Tahsildar as provided under Section 89 of the Land Revenue Code.

5. In view of above, no substantial question of law arises for consideration. The appeal is accordingly dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge