

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.576 of 2015**

Dabbeer Khan, son of late Bashir Khan, aged about 65 years, president Anjuman Islamiya Committee, Village Tirra, Tahsil and District Dhamtari (CG).

---- Appellant**Versus**

1. Rikhiram of Motilal Kenvat, aged about 38 years, resident of Village Tirra, Tahsil and District Dhamtari (CG).
2. State of Chhattisgarh, through the Collector Dhamtari, District Dhamtari (CG).

---- Respondents

For Appellant : Shri Vishnu Koshta, Advocate.
 For Respondents/State : Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****24/06/2016**

- (1) Heard on admission.
- (2) This is plaintiff/appellant's second appeal under Section 100 of the Code of Civil Procedure (for short 'the CPC') challenging the judgment and decree dated 04.08.2015 passed by Additional District Judge, Dhamtari in Civil Appeal No.63-A/2014, affirming the judgment and decree dated 19.08.2013 passed by Second Civil Judge, Class-II, Dhamtari in Civil Suit No.29-A/2013, whereby, the trial Court has dismissed the suit.
- (3) Plaintiff's/appellant's filed a suit for removal of illegal

encroachment, construction and possession of the suit land, which was dismissed by the trial Court holding that the suit property is a government “Grass Land” earmarked for burial ground (Kabristan). The trial Court has also held that the respondent/defendant No.1 has encroached upon the suit land.

(4) On the appeal being filed by the appellant/plaintiff, the First Appellate Court has affirmed the finding of the trial Court by dismissing the appeal holding that the appellant/plaintiff is not entitled for recovery of the possession of the suit land.

(5) The trial Court as well as the First Appellate Court have concurrently found that the suit land is a government grass land and reserved for burial ground (Kabristan) and, therefore, plaintiff/appellant is not entitled for possession of the suit land and respondent/defendant No.1 is unauthorizedly possession of the suit land.

(6) After hearing learned counsel for the parties and after gone through the records of the Courts below, I am of the considered opinion that the concurrent finding recorded by two Courts below are the finding of the facts based on the evidence available on record, I do not find any substantial question of law for admission of this appeal.

(7) At this stage, Shri Vishnu Koshta, learned counsel appearing for the appellant/plaintiff would submit that the revenue

authority may be directed to remove the illegal construction as observed by the first appellate Court that the Government of Chhattisgarh is competent to proceed Section 248 of the Chhattisgarh Land Revenue Code, 1559 against the respondent/defendant No.1.

(8) No further direction is necessary. In view of observation made by the first appellate Court, it is open to the appellant/plaintiff to approach the competent authority in accordance with law.

(9) With the aforesaid observation, the second appeal is dismissed. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

L/-