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**HIGH COURT OF CHHATTISGARH, BILASPUR****Second Appeal No. 482 of 2005**

Kamini Kumar, aged about 36 years, wife of Sureshchandra Kumar, R/o Dayalband, Bilaspur, Tahsil & District Bilaspur (C.G.)  
..... Plaintiff

**---- Appellant****Versus**

1. Bhaudas, aged 60 years, S/o Mukundi Lal, R/o Rahengi, Tahsil Bilha, District Bilaspur (C.G.)
2. State of Chhattisgarh, through The Collector, Bilaspur (C.G.)  
..... Defendants

**---- Respondents**


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For Appellant: Mr. Akhtar Hussain, Advocate.  
For Respondent No.2: Mrs. Astha Shukla, Panel Lawyer.

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**Hon'ble Shri Justice Sanjay K. Agrawal****Order On Board****07/09/2016**

(1) This is plaintiff's Second Appeal under Section 100 of the Code of Civil Procedure (for short 'the CPC') against the judgment and decree dated 09.08.2005 passed by Additional District Judge, Bilaspur in Civil Appeal No. 6-A/2004, affirming the judgment and decree dated 31.01.2004 passed by 7<sup>th</sup> Civil Judge, Class-II, Bilaspur in Civil Suit No. 278-A/02, dismissing the suit.

[For sake of convenience, the parties would be referred hereinafter as per their status before the trial Court]

(2) The plaintiff's suit for declaration of title and permanent injunction

was dismissed by the trial Court holding that the suit land was the service land granted to the father of defendant No.1 as a village Kotwar and that has been sold by defendant No.1 in favour of plaintiff and pursuant to which no title has been transferred in favour of plaintiff.

(3) The plaintiff preferred first appeal there-against. The First Appellate Court, by its impugned judgment & decree dated 9.8.2005 clearly held the suit land is the service land granted earlier to the father of defendant No. 1 and sale made by defendant No.1 in favour of plaintiff is null & void by virtue of the provisions contained in Section 183(2) of the Chhattisgarh Land Revenue Code and dismissed the appeal.

(4) Shri Akhtar Hussain, learned counsel appearing for the appellant/plaintiff would submit that concurrent findings recorded by both the courts below that suit land is service land is a finding based on no evidence and, therefore, it give rise a substantial question of law for determination in this appeal.

(5) I have heard learned counsel appearing for the appellant and perused the records of both the courts below.

(6) The trial Court has clearly recorded a finding that the suit land has been declared as a service land by the order of Sub-Divisional Officer dated 10.05.2000 and it was given to defendant No.1-Bhaudas in the capacity of Kotwar and as such defendant No.1-Bhaudas had no right to transfer the suit land being the service land to the plaintiff. Service land is governed by Section 183 of the Chhattisgarh land Revenue Code, 1959.

(7) Section 183 of the C.G. Land Revenue Code reads as under:-

**“183. Service land.-** (1) Any person holding land on the condition of rendering service as village servant shall

cease to be entitled to such land if he diverts such land to non-agricultural purposes.

(2) A transaction by which a village servant attempts to transfer his interest in his service land by sale, gift, mortgage, sub-lease or otherwise except by a sub-lease for a period not exceeding one year, shall be void.

(3) If the holder of such land dies, resigns or is lawfully dismissed the land shall pass to his successor in office.

(4) The right of the holder in such land shall not be attached or sold in execution of a decree nor shall a receiver be appointed to manage such land under Section 51 of the Code of Civil Procedure, 1908.”

(8) Sub-section 1 of the above stated provisions clearly states that village servant shall cease to be entitled to such land if he diverts such land to the non-agricultural purposes; and sub-Section 2 provides that a transaction by which a village servant attempts to transfer his interest in his service land by sale, gift, mortgage or sub-lease for a period of one year shall be void and upon death of holder, land shall pass to his successor in office.

(9) Way back, in the matter of ***Pahup Singh Vs. Haridas***<sup>1</sup>, the High Court of Madhya Pradesh has held that the transfer of service land in contravention of Section 183(2) of Code of 1959 is void and transferee of service land cannot claim any right on the basis of such transfer and held as under:-

“3. Section 183(2) of the Land Revenue Code provides that a transaction by which a village servant attempts to transfer his interest in his service land by sale, gift, mortgage, sub-lease or otherwise except by a sub-lease for a period not exceeding one year shall

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1 1977 RN 467

be void. It may be assumed that the defendant is a village servant and that his land which was given to the plaintiff for cultivation is his service land. As a result of the operation of section 183(2); the transaction by which the plaintiff got the right to cultivate the defendant's land for three years was void. The plaintiff, therefore, could not claim to cultivate the land. Indeed, the plaintiff in his suit did not claim that he had a right to cultivate the land and he has not sued for possession of the land. All that the plaintiff claims is the repayment of loan. The loan transaction is not wiped out by section 183(2). The plaintiff's suit being merely for repayment of the balance amount of loan, is not hit by section 183(2). The trial Court was, therefore, wrong in rejecting the plaint."

(10) In view of the provision contained in Section 183(2) of Code of 1959 and decision rendered by the High Court of Madhya Pradesh in **Puhup Singh** (supra), it is held that the transfer of service land in contravention of Section 183(2) is void.

(11) The concurrent findings recorded by both the courts below holding that defendant No.1 was not entitled to transfer the service land to the plaintiff by virtue of Section 183(2) of the C.G. Land Revenue Code is the finding of fact based on material available on record and I do not find it either perverse or contrary to record and no question of law much less substantial question of law is involved in this appeal.

(12) Recently, the Supreme Court in the case of **Vishwanath Agrawal, S/O Sitaram Agrawal Vs. Sarla Vishwanath Agrawal**<sup>2</sup> has held that High Court should not disturb the concurrent finding of fact, unless finding recorded are perverse being based on no evidence. Para-36, 37 of report

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2 (2012) 7 SCC 288

as under:-

“36. In *Major Singh Vs. Rattan Singh*<sup>3</sup> it has been observed that when the courts below had rejected and disbelieved the evidence on unacceptable grounds, it is the duty of the High Court to consider whether the reasons given by the courts below are sustainable in law while hearing an appeal under Section 100 of the Code of Civil Procedure.

37. In *Vidhyadhan Vs. Manikrao*<sup>4</sup> it has been ruled that the High Court in a second appeal should not disturb the concurrent findings of fact unless it is shown that the findings recorded by the Courts below are perverse being based on no evidence or that on the evidence on record no reasonable person could have come to that conclusion. We may note here that solely because another view is possible on the basis of the evidence, the High Court would not be entitled to exercise the jurisdiction under Section 100 of the Code of Civil Procedure. This view of ours has been fortified by the decisions of this Court in *Abdul Raheem V. Karnaraka Electricity Board*<sup>5</sup>.”

(13) Keeping in view, the ratio of law laid down by the Supreme Court in the aforesaid case, the concurrent finding of fact recorded by both the courts below is based on evidence, no substantial question of law is involved in this appeal, thus appeal deserves to and accordingly dismissed at admission stage itself. No order as to costs.

Sd/-

(Sanjay K. Agrawal)

Judge

D/-

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3 (1997) 3 SCC 546: AIR 1997 SC 1906

4 (1999) 3 SCC 573

5 (2007) 14 SCC 138: AIR 2008 SC 956

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