

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.261 of 2009**

1. Birij Bai, aged 50 years, Wd/o Prem,
2. Darasram, aged 30 years, S/o Prem,
3. Shyam Bai, aged 25 years, W/o Sakhiram, D/o Prem,
4. Dharam, aged 50 years, S/o Adhar,
5. Mohanlal, aged 45 years, S/o Adhar,
- 6(i) Budhram S/o late Siri, aged about 55 years, (S/o Appellant No.6)
- 7(i) Teras Ram S/o Late Dau, aged about 55 years,
- 7(ii) Tulsi Prasad S/o Late Dau, aged about 45 years,
- All R/o Village Kaitha, Tahsil-Jaijapur, District Janjgir-Champa (CG)
8. Ramcharan, aged 40 years, S/o Nanki,
- (All Caste-Kurmi, Occupation-Agriculturists, R/o Village Kaitha, Tehsil-Sakti, Distt.Janjgir-Champa)

---- Petitioners

Versus

1. Shatruhan Kumar, aged 55 years, S/o Motiram
2. Santosh Kumar, aged 40 years, S/o Motiram
- (Both R/o Village Kaitha, Tehsil Jaijaipur, Distt. Janjgir-Champa (CG)
3. Anusuiya Bai, aged 45 years, D/o Motiram, W/o Jawaharlal, R/o Loharsi, Tehsil-Pamgarh, Distt.Janjgir-Champa
4. Neera Bai, aged 35 years, D/o Motiram, W/o Rathram, R/o Mahda, Tehsil Jaijaipur, Distt.Janjgir Champa

---- Respondents

For Appellants : Mr.M.K.Bhaduri, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board**2/8/2017

1. The original plaintiff-Motiram filed a suit for possession and damages, in which the appellants/defendants appeared and contested the suit stating inter-alia that defendant Dharamlal has become title holder as the land was mortgaged by plaintiff Motiram to defendant Dharamlal in lieu of loan amount of Rs.9000/- and he has failed to repay the amount within the stipulated time, therefore, he is entitled to continue with the possession. The trial Court by judgment and decree dated 30.11.2000 dismissed the suit holding that suit is barred under

Section 257 (x) of the Chhattisgarh Land Revenue Code, 1959 (hereinafter called as 'Code'), against which, the legal representative of plaintiff Motiram preferred an appeal before the First Appellate Court. The First Appellate Court allowed the appeal and decreed the suit in favour of legal representative of plaintiff Motiram, against which, this Second Second Appeal has been filed.

2. Learned counsel appearing for the appellants would submit that the First Appellate Court is absolutely unjustified in negating the issue of jurisdiction as the jurisdiction of the Civil Court was expressly barred in view of the provisions contained in Section 257 (x) of the Code.
3. I have heard learned counsel appearing for the appellants and perused the records with utmost circumspection.
4. A careful perusal of the plaint would show that it is the case of the plaintiff that he has mortgaged his land to defendant Dharamlal and obtained Rs.9000/- as a loan and the defendants promised to return the land, that amount was repaid, but possession was not returned back to plaintiff Motilal, therefore, suit for possession was filed. Perusal of plaint would show that it was basically the suit for possession based on title.
5. Full Bench of the Madhya Pradesh High Court in the matter of **Ramgopal Kanhaiyalal Vs. Chetu Batte**¹ has held that suit by Bhumiswami for declaration of title and possession, jurisdiction of Civil Court is not excluded. It was observed as under:-

“15. Under the general law, a suit for possession based on title can be instituted in the Civil Court within 12 years from the date of dispossession. The principle that possession must follow title has received greater weight and sanctity when the distinction between the

¹ AIR 1976 Madhya Pradesh 160

scope and effect of Article 142 and those of Article 144 of the Limitation Act, 1908, has been watered down and simpler provisions have been substituted in Articles 64 and 65 of the Limitation Act of 1963. It will be anomalous to read Section 250 as providing for a suit for possession based on title, which is to be instituted within two years only. It will entail a fantastic result that if a suit is not brought within two years under Section 250, the Bhumiswami's right will be extinguished, because, by virtue of Section 26 of the Limitation Act, if a suit for possession is not instituted within the period of limitation prescribed therefore, not only the remedy is barred but the right is also extinguished. Section 26 is an exception to the general rule that limitation bars the remedy but does not extinguish the right.

16. Even under the Delhi Reforms Act (supra), which was for consideration before their Lordships in *Hatti v. Sunder Singh* (supra), (AIR 1971 SC 2320) it is mark-worthy that the question of title has to be referred to the Civil Court and, moreover, there is no period of limitation prescribed. Thus, there is no deviation from the consistent policy of the law that the question of title relating to immovable property must be determined by the Civil Court. We do not see any deviation from that policy in any of the provisions of the M. P. Land Revenue Code either. On the other hand, Sections 111 and 178 are in concordance with that policy.

17. We, therefore, hold that a Bhumiswami is not bound to avail himself of the speedy remedy provided in Section 250 of the Code. It is open to him to take recourse to the summary remedy under Section 250, or even without it straightway bring a suit in the Civil Court for declaration of his title and possession. Even if there has been a decision under Section 250 by a revenue Court, the party aggrieved may institute a civil suit to establish his title to the disputed land. We further hold that *Nathu v. Dilbande Hussain*, AIR 1967 Madh Pra 14 = 1964 Jab LJ 707 was correctly decided. The Civil Court can take cognizance of a suit. This is our answer to the questions referred to us."

6. Following the decision of the High Court of Madhya Pradesh and in view of legal position, the plaintiff's suit is for possession based on title and as such jurisdiction of the Civil Court is not excluded. I do not find any perversity or illegality in the judgment and decree passed by

the First Appellate Court decreeing the suit in favour of the plaintiff and and as such, I do not find any substantial question of law in this second appeal.

7. Accordingly, the appeal being without substance is liable to be and is hereby dismissed leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-