

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 424 of 1999**Judgment reserved on : 12.07.2018Judgment delivered on : 24.07.2018

Om Prakash Makkad, S/o Jugal Kishore Makkdad, aged about 35 years, at Present R/o Kunkuri, Tahsil- Kunkuri, District- Jashpurnagar.

---- Appellant**Versus**

1. Tajim Khan S/o Jamruddin, aged about 32 years.
2. Manjhali alias Munnibai wife of Tajim Khan, aged about 30 years.
Both above R/o Bazan Dand, Jashpurnagar, Tahsil & District- Jashpurnagar.
3. Bajrang Gupta, S/o Laxmi Sao, aged about 35 years, Occupation Business, R/o Baniatola, Jashpurnagar, Tahsil & District- Jashpurnagar.
4. The State of Madhya Pradesh, Through Collector, Jashpurnagar.

---- Respondents

For Appellant	:	Mr. B.P. Gupta, Advocate
For Respondents No. 1 to 3:	:	Mr. J.K. Saxena, Advocate.
For State	:	Mr. Vivek Singhal, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**CAV JUDGMENT**

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 23.04.1999 passed by Additional District Judge, Jashpurnagar, Madhya Pradesh (Now CG) in Civil Suit No. 2-A/1998 wherein the said court dismissed the suit filed by the appellant for declaration of title/ possession/ permanent injunction/ mense profit for land bearing Khasra No. 814/2 admeasuring 750 sq.ft. situated in Bhagalpur Bartoli, District- Jashpurnagar.
2. As per the appellant, his ancestor obtained the suit land from Jashpurnagar estate and they were continued in possession of the suit land. Father of the

appellant was running grocery shop on the suit land in 1989. The appellant made alteration in the suit house and constructed two rooms. The appellant went to Kunkuri on 12.01.1995 to celebrate Makar Sankrant and in absence of the appellant, respondents No. 1 to 3 broken the lock of grocery shop and removed all the materials and dispossessed the appellant from the suit house. The appellant lodged a report in Police Station- Jashpurnagar, after lodging of the report, some material returned to the appellant, but possession of the land was not given to him that's why he filed suit before the trial court.

3. After recording evidence and hearing the parties, it is decided by the trial court that appellant is not owner of the land and the same is grass land. As per record of right, one Mangru is in possession as per khasra entries since 1975. The trial court further opined that respondents No. 1 to 3 have not dispossessed the appellant.
4. The case of the appellant is based on title and as per pleading of the appellant, the land was allotted to his ancestor by the Jashpurnagar estate, but no document is produced before the trial court to establish that the estate has allotted the land to the ancestor of the appellant. As per khasra entries of the suit land, one Mangru who was father of respondent No. 2 was in possession of the land. The khasra entries made in the year 1979-80 and 1983 and in khasra entries of the year 1995-98, Mangru was in possession with house and kitchen garden. The khasra entries since 1982-83 shows that Mangru was in possession of the suit land.
5. On the basis of khasra entries, the trial court opined that the appellant was not in possession of the suit premises. As per Section 117 of the Chhattisgarh Land Revenue Code, 1959, the khasra entries are presumed to be correct until rebutted. In the present case, possession of Mangru was

shown in the record for a long period and the same is substantiated by oral evidence of the respondent side.

6. As the land was recorded as grass land, as per Clause 237 (b) of the Chhattisgarh Land Revenue Code, 1959, it is reserved for grazing of cattle and it has never been allotted to the appellant.
7. Learned counsel for the appellant submits that as per evidence of Madan Mohan Nayak, PW-1, Om Prakash Makkad, PW-2, Ram Prasad Uraon, PW-3 & Deekishan Makkad, PW-4, it is proved that appellant was running the grocery shop in the suit house and he was owner of the suit land. He further submits that as per statement of Madan Mohan Nayak, PW-1 it is established that two houses were situated in the suit land one belong to Mangru and other belong to the appellant therefore, possession of the appellant is established.
8. In view of this, bald statement is not sufficient to establish the title over the suit property. The title is either acquired by inheritance or through sale deed, gift deed, will or other mode of acquiring the title.
9. In the present case, the disputed land is government land and the same is recorded as grass land for specific purpose. The land was never allotted to the appellant or his ancestor and therefore, possession in any part of the land is nothing but encroachment in government land and the same is liable to be evicted as per section 248 of the Chhattisgarh Land Revenue Code, 1959. For the sake of argument, it is assumed that the appellant was in possession in any part of the land, the same was illegal and illegal possession cannot be retained by any one and no relief can be granted to any person who is in illegal possession of the land.
10. It is contended on behalf of the appellant that if the land is recorded in the name of State government, the appellant cannot be dispossessed without

any proper procedure. In view of this, the appellant has not proved his title and also not proved as to how he came in possession of the suit land, unless legal possession is proved, the Court cannot grant relief to the appellant by restoring the possession.

11. The finding arrived at by the trial court is based on proper appreciation of oral and documentary evidences and appellant is not entitled to any relief as sought by him.
12. Considering the facts and circumstances of the case and the material available on record, this Court of the opinion that the trial Court is right in dismissing the suit and the same is not liable to be interfered with invoking jurisdiction of the appeal.
13. Accordingly, the decree in favour of the respondent and against the appellant is passed on the following terms and conditions:
 - (i) The appeal is dismissed with cost.
 - (ii) Parties shall bear their own cost.
 - (ii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
 - (iii) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge