

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.144 of 2003

Krishna Chandra (dead)

1. Ram Lal, aged about 56 years, S/o Late Krishna Chandra
2. Bansidhar, aged about 53 years, S/o Late Krishna Chandra
3. Smt. Ram Bai, aged about 51 years, D/o Late Krishna Chandra, R/o Village Kanakbeera, Tahsil & District Raigarh (C.G.)
4. Smt. Mohan Kunwar (Died and deleted)

No.1, 2 & 4 all R/o Village Ameri, Tahsil Sarangarh, Distt. Raigarh (C.G.)

(Plaintiffs)
---- Appellants

Versus

1. Rameshwar (Dead) Through LRs

1A. Smt. Kiran Patel, D/o late Rameshwar Choudhary, W/o Shri Tikendra Patel, aged about 30 years, R/o Village Gudeli, Police Station Sarangarh, District Raigarh (C.G.)

1B. Smt. Chaitan Kumari Choudhary, W/o late Rameshwar Choudhary, aged about 55 years, R/o Village Ameri, Tahsil Baramkela District Raigarh (C.G.)

2. Badri, aged about 45 years, S/o Dayanidhi, R/o Village Ameri, Tahsil Sarangarh, District Raigarh.

3. Laxmi Prasad (Dead) Through LRs

3A. Ram Jivan, S/o Late Laxmi Prasad, aged about 43 years, Occupation Agriculturist,

3B. Bharat Lal, S/o Late Laxmi Prasad, aged about 35 years, Occupation Agriculturist,

3C. Smt. Darashmati (Died and deleted)

3D. Smt. Sumitra, D/o Late Laxmi Prasad, aged about 45 years, W/o Ram Ratan Patel, Occupation Housewife, R/o Village Deogon, Tahsil Baramkela, Distt. Raigarh (C.G.)

3E. Smt. Susheela, D/o Late Laxmi Prasad, aged about 38 years, W/o Parasram Patel, Occupation Housewife, R/o Village Deogon, Tahsil Baramkela, Distt. Raigarh (C.G.)

4. The State of Chhattisgarh, Through the Collector, District Raigarh
(C.G.)

(Defendants)
---- Respondents

For Appellants: Mr. Roop Naik, Advocate.
For LR's of Respondents No.1 & 3 and Respondent No.2: -
None present, though served.
For Respondent No.4 / State : -
Mr. Arun Sao, Deputy Advocate General and
Mr. Adhiraj Surana, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

10/10/2018

1. The substantial question of law involved, formulated and to be answered in the plaintiffs' second appeal is as under: -

“Whether on the facts and in the circumstances of the case, when it was not disputed that the suit lands mentioned in the Schedule A & B were recorded in the name of the appellants/plaintiffs, the Courts below were justified in non-suiting the plaintiffs?”

(Parties hereinafter will be referred as per their status shown in the plaint before the trial Court.)

2. The plaintiff filed a suit for declaration of title and for recovery of possession stating inter alia that defendants No.1 to 3 have encroached and taken possession of the lands shown in red ink in the map annexed with the plaint i.e. Schedule A & B and as such, he is entitled for declaration of title and possession, as he is the title holder of the suit land and defendants No.1 to 3 have encroached upon the said land.

3. Defendants No.1 to 3 filed their written statement before the trial Court stating inter alia that though the suit land is registered in the name of the plaintiff, but during the lifetime of their ancestors, the

suit land has been partitioned and is in possession of the defendants, partition is 100 years prior and the defendants' house and courtyard / kitchen garden were constructed on the said land and as such, the suit is liable to be dismissed.

4. The trial Court after considering oral and documentary evidence on record, came to a specific conclusion that the parties are related to each other and partition has already been effected before the parties as they are in possession as per the partition and since the order of the Naib Tahsildar has not been declared null and void, therefore, the plaintiff is not entitled for declaration of title and recovery of possession.
5. On appeal being preferred by the plaintiff / appellant herein, the first appellate Court affirmed the judgment & decree of the trial Court and clearly held that though the suit land is ancestral land of the parties in which partition has already been effected between the parties and defendants No.1 to 3 are in possession of the suit house after constructing house, kitchen garden and khalian; partition took place prior to 50 years of the date of institution of suit; and also held that as per the demarcation report Ex.P-1, defendants No.1 to 3 are in possession and merely on the basis of mutation entries it cannot be held that the plaintiff is title holder of the suit land. Questioning that judgment & decree, second appeal under Section 100 of the CPC has been filed in which substantial question of law has already been formulated and set-out in the opening paragraph of the judgment.
6. Mr. Roop Naik, learned counsel for the appellants / LRs of the plaintiff, would submit that admittedly, the plaintiff's name is

recorded in the revenue records, which has not been disputed by defendants No.1 to 3, therefore, both the Courts below are absolutely unjustified in dismissing the suit holding that there is prior partition and defendants No.1 to 3 are in possession as per prior partition allegedly affected between the parties and as such, on the basis of revenue records, decree ought to have been granted by both the Courts below.

7. None appeared for defendants No.1 to 3, though served.
8. Mr. Arun Sao, learned Deputy Advocate General and Mr. Adhiraj Surana, learned Deputy Govt. Advocate appeared for the State / respondent No.4.
9. I have heard learned counsel for the parties and considered the rival submissions and went through the record with utmost circumspection.
10. The plaintiff filed suit for declaration of title and recovery of possession on the ground that he is the title holder and defendants No.1 to 3 have encroached, rather they have encroached upon the land owned by the plaintiff which he got on partition, therefore, he is entitled for decree of title and recovery of possession. Both the Courts below after appreciating the documentary evidence and considering the oral evidence on record relying upon the testimony of the defendants and their witnesses, even the plaintiff's witness – Radheyshyam (PW-5), have concurrently held that the suit land is ancestral land of the parties which has already been partitioned 50 years prior to institution of suit and after partition, the defendants are in possession in which they have constructed their house,

kitchen garden and khalihaan (courtyard). The finding recorded by the two courts below holding the land to be ancestral property of the parties and partition having been affected between the parties cannot be said to be perverse or contrary to record. Even the plaintiff's witness – Radheyshyam (PW-5) has admitted the fact of partition between the parties. The first appellate Court has also held that merely because the suit land is recorded in the revenue records in the name of the plaintiff, it could not per se confer title upon the plaintiff.

11. It is well settled law that mutation entries do not confer right, title or interest in the suit property, it is only for the purpose of collecting land revenue. It is also well settled that in case of suit based on title, the source of title has to be indicated.

12. In the matter of **R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami and V.P. Temple and another**¹, the Supreme Court has categorically held that in a suit for recovery of possession based on title it is for the plaintiff to prove his title and satisfy the court that he in law, is entitled to dispossess the defendants from his possession over the suit property, which has not been done in the present case.

13. Mutation entries or khasra entries are not documents of title and no decree can be granted on the basis of mutation entries in favour of the plaintiff.

14. In the matter of **Sawarni v. Inder Kaur**², the Supreme Court has held as under: -

1 2004(13) AIC 389 (SC)

2 (1996) 6 SCC 223

“7. ... Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. The learned Additional District Judge was wholly in error in coming to a conclusion that mutation in favour of Inder Kaur conveys title in her favour. This erroneous conclusion has vitiated the entire judgment.”

15. The principle of law laid down in Sawarni (supra) has been followed and quoted with approval by the Supreme Court in the matter of Prem Nath Khanna and others v. Narinder Nath Kapoor (Dead) Through Legal Representatives and others³

and it was observed as under: -

“21. In *Guru Amarjit Singh v. Rattan Chand*⁴, this Court held that the entries in jamabandi are not proof of title in respect of an immovable property. In *Jattu Ram v. Hakam Singh*⁵, this Court observed that entries made by patwari in official record are only for the purpose of records and do not by itself prove the correctness of the same nor can statutory presumption be drawn on the same, particularly, in the absence of corroborative evidence. The respondent cannot claim to have acquired title over the suit property by pleading adverse possession only in the absence of the name of the appellants in the revenue records. In *Kishan Singh v. Arvind Kumar*⁶ and *P.T. Munichikkanna Reddy v. Revamma*⁷, this Court held that in cases where the possession was initially permissive, the burden lies heavily on that person alleging adverse possession to prove that the possession has become adverse. Mere possession for long time does not convert permissive possession into adverse possession.”

16. As such, on the basis of mutation entries, decree cannot be granted in favour of the plaintiff and therefore both the Courts below are absolutely justified in dismissing the suit of the plaintiff. I do not find any illegality or perversity in the said finding. The substantial question of law is answered accordingly and the second appeal is

3 (2016) 12 SCC 235

4 (1993) 4 SCC 349

5 (1993) 4 SCC 403

6 (1994) 6 SCC 591

7 (2007) 6 SCC 59

dismissed leaving the parties to bear their own cost(s).

17. A decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

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