

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 109 of 2003**

1. Chhedilal, S/o Kartikram, aged about 40 years, Caste- Satnami.
2. Ramcharan, S/o Mangal Singh, aged about 46 years, Caste- Kanwar,
3. Kartikram, S/o Bisahu, aged about 46 years, Caste – Raut.
4. Sriram (since deceased) through LRs.-
- 4(a) Mani Ram, S/o late Sriram Ratre, aged about 65 years, R/o- Nawapara, Kothari, Tahsil- Kartala, District Korba (C.G.)

All r/o village Nawapara, Tehsil Kartala, Distt. Korba, C.G.

----Appellants/defendants No. 1 to 4

Versus

1. Gora Singh (since deceased) through LRs.
 - 1(A) Santosh Singh, S/o late Gore Singh, aged about 44 years, (son of Deceased R/1), R/o Village- Navapara (Rogda), PO-Kothari, Tahsil- Kartala, District – Korba (C.G.) (Plaintiff)
 2. Fulbai (since deceased) through LRs.
 - 2(A) Lokpal Singh, aged 40 years,
 - 2(B) Bhupendra Singh, aged 35 years,
- Both son of Mangal Singh, R/o village Mandwa, P.O. Janjgir, Tahsil Janjgir, District Janjgir-Champa (C.G.)
3. Surman Singh, S/o Suraj Singh, aged about 41 years, Caste – Kanwar, resident of village Nawapara, Tehsil Kartala, Distt. Korba (C.G.)
 4. The State of Chhattisgarh, through Collector, Korba (C.G.)

(Def. 2 to 7)

---- Respondents

For Appellants : Shri Ravish Verma, Advocate
 For Respondent No.1 : Shri Goutam Khetrapal & Shri A.C. Sahu, Adv.
 For Respondents 2A & 2B : None

For Respondent No. 3 : None
For Respondent No. 4/State : Shri Ashish Surana, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

25/10/2018

(1) The substantial question of law involved, formulated and to be answered in this defendants' No. 1 to 4 second appeal states as under:

“Whether the findings of the first appellate Court while reversing the judgment of the trial Court was proper, legal and justified particularly keeping in view the maintainability of the suit itself in the light of Section 57(2) of M.P. Land Revenue Code, 1959 ?”

(2) The imperative facts required to be noticed for adjudication of this appeal are as under:

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

(2.1) Original plaintiff – Gora Singh / respondent No.1 herein filed a suit for declaration of title and permanent injunction in relation to Khasra No. 180, area 9.16 acres situated at village Nawapara, Tehsil Kartala, District Korba stating inter alia that plaintiff and defendants No. 5 to 7 are the owner of the suit tank in which the defendants No. 1 to 4 / appellants are trying to take out the fishes from the suit tank and they are also trying to take certain bolders etc. causing irreparable loss to him, therefore, defendants No. 1 to 4 be restrained from interfering in his possession.

(2.2) Defendants No. 1 to 4 / appellants remained ex parte and did not file their written statement.

(2.3) The trial Court, by its judgment & decree dated 9.1.1999, dismissed the suit finding no merit. The plaintiff preferred first appeal thereagainst. The first appellate Court, by its impugned judgment & decree dated 2.2.2002 allowed the plaintiff's appeal relying upon the document Ex.P-1 i.e. copy of record-of-rights of village Nawapara for the year 1967-68 and copy of document Ex.P-2 i.e copy of map of the suit tank. Questioning the judgment and decree passed by the first appellate court, this second appeal has been preferred by the appellants/defendants No. 1 to 4 in which the substantial question of law has been formulated for consideration and which has been set out in the opening paragraph of the judgment.

3. Learned counsel appearing for the appellants/defendants No. 1 to 4 would submit that the first appellate Court was absolutely unjustified in granting decree in favour of the plaintiff / respondent No.1 relying upon the document Ex.P-1, which is the only copy of record-of-rights of village Nawapara, Tahsil Katghora, District Bilaspur particularly for the year 1967-68, which does not create any right in favour of the plaintiff and, as such, the judgment & decree passed by the First Appellate Court is liable to be set aside and the decree of the trial Court deserves to be restored, and thereby the suit be dismissed.

4. Learned counsel appearing for respondent No.1/plaintiff would submit that in the copy of record-of-rights of village Nawapara for the year 1967-1968 (Ex.P-1) name of plaintiff and defendants No. 5 to 7 have already been recorded and, therefore, the first appellate Court was rightly held that the plaintiff is the title holder of the suit tank and rightly decreed the suit in plaintiff's favour, therefore, the substantial question of law framed by this Court be answered in affirmative and the

appeal be dismissed.

5. I have heard learned counsel for the parties and considered their rival submission perused the records of the both the Courts below with utmost circumspection.

6. The trial Court dismissed the suit finding no title in favour of plaintiff *whereas* the first appellate Court relying upon the document Ex.P-1 i.e. copy of record of right of village Nawapara, in which name of plaintiff and defendants No. 5 to 7 are recorded as Bhumiswami, allowed the appeal of the plaintiff.

7. The question for consideration would be whether on the basis of entries in the records of rights, the plaintiff can be held to be title holder of the property in dispute ?

8. Record-of-rights is prepared under Section 108 of the Land Revenue Code, 1959, which states as under:-

“108. Record of rights-[(1)] A record-of-right shall in accordance with rules made in this behalf be prepared and maintained for every village and such record shall include the following particulars:-

(a) the names of all Bhumiswamis together with survey numbers or plot numbers held by them and their area, irrigated or unirrigated;

(b) the names of all occupancy tenants and Government lessees together with survey numbers or plot numbers held by them and their area, irrigated or unirrigated;

(c) the nature and extent of the respective interests of such persons and the conditions or liabilities, if any, attaching thereto;

(d) the rent or land revenue, if any, payable by such persons; and

(e) such other particulars as may be prescribed.

[(2)] The record-of-rights mentioned in sub-section (1) shall be prepared during a [revenue survey] or whenever the State Government may, by notification, so direct]

9. It is well settled proposition of law that the record of right of the revenue record are kept only for the fiscal purpose of fixing the liability to pay the land revenue. On the basis of such revenue entries and record, the title of the parties with respect of the land, could not be adjudicated as such record itself is not sufficient to draw the inference confirming the title over the property in favour of either of the parties.

10. The Supreme Court in the matter of **Durga Das Vs. Collector and others**¹ has held as under:-

“2. This appeal..... Mutation entries do not confer any title to the property. It is only an entry for collection of the land revenue from the title they acquired to the land and not by mutation entries....”

11. The aforesaid view was further followed by the Supreme Court in the matter of **State of U.P. Vs. Amar Singh and others**² in which it was held as under:-

“5. Thus, on It is settled law that mutation entries are only for the purpose of enabling the State to collect the land revenue from the person in possession but it does not confer any title to the land. The title would be derived from and instrument executed by the owner in favour of an alienee as per the Stamp Act and registered under the Registration Act.....”

12. In the matter of **State of H.P. Vs. Keshav Ram and others**³, their Lordships of the Supreme Court held that as to whether the entry in the settlement papers recording somebody's name could create or extinguish title in favour of the person concerned. Relevant paragraph of the report states as under :-

“5.....But at any rate such an entry in the Revenue papers by no

1 (1996) 5 SCC 618

2 (1997) 1 SCC 734

3 (1996) 11 SCC 257

stretch of imagination can form the basis for declaration of title in favour of the plaintiffs. To our query as to whether there is any other document on the basis of which the plaintiffs can claim title over the disputed land, the learned counsel for the plaintiffs-respondents could not point out any other document apart from the alleged correction made in the register pursuant to the order of the Assistant Settlement Officer. In our considered opinion, the Court below committed serious error of law in declaring plaintiffs' title on the basis of the aforesaid order of correction and the consequential entry in the Revenue papers.”

13. Like-wise in **Balwant Singh and another vs. Daulat Singh (dead) by L.Rs.**⁴ and others, the Supreme Court has struck the similar proposition, as under :

“We have already noticed that mutation entries do not convey or extinguish any title and those entries are relevant only for the purpose of collection of land revenue. That being the position. Mutation No.1311 cannot be construed as conveying title in favour of Balwant Singh and Kartar Singh or extinguishing the title of Durga Devi in the suit property. Consequently, the title to the suit property always vested with the widow notwithstanding the Mutation No.1311 viewed in this manner, the decision in the earlier proceedings namely, decree in Suit No.194/55 even assuming operates as res judicata, will not be of any avail to the contesting respondents, (plaintiffs) in the present suit-----”

14. Similarly, law laid down by the Supreme Court in the matter of **Calcutta Municipal Corporation and others vs. Shrey Mercantile Pvt. Ltd. and others**⁵ as under:

“18.....As stated above, the purpose of mutation is to register the transfer in the records of the Corporation which in turn would help the Corporation to recover taxes from the existing tax payers.

4 AIR 1997 SC 1534

5 AIR 2005 SC 1879

Therefore, no special benefit results to the transferee who is made statutorily liable to inform the Corporation of the change, if any, in the name of the person primarily liable to pay the tax.

19. In the case of *Nand Kishwar Bux Roy v. Gopal Bux Rai* reported in (AIR 1940 Privy Council 93). Mutation proceedings are merely in the nature of fiscal inquiries, instituted in the interest of the State for the purpose of ascertaining which of the several claimants for the occupation of the property may be put into occupation of it with the greater confidence that the revenue for it will be paid.

20. Therefore, it is clear that mutation enquiry is instituted in the interest of the Corporation for tax purposes and not for the benefit of the tax payer.”

15. Recently, the Supreme Court in the matter of **Union of India Vs. Vasavi Cooperative Housing Society Limited**⁶ has held as under:-

“21. This Court in several judgments has held that the revenue records do not confer title. In *Corpn. of the City of Bangalore v. M. Papaiah*⁷, the Supreme Court held as under:-

“5..... It is firmly established that the revenue records are not documents of title, and the question of interpretation of a document not being a document of title is not a question of law.”

16. Further, in the matter of **Union of India and others Vs. Vasavi Co-op Housing Society Ltd. And others**⁸, their Lordships of the Supreme Court held as under:-

“24. We are of the view that even if the entries in the record-of-rights carry evidentially value, that itself would not confer any title on the plaintiff of the suit land in question....”

17. Reverting to the facts of the present case in light of principle of law laid down by the Supreme Court in the above-cited cases (supra) reveals that it cannot be held that entry made in the record-of-rights would confer title to the plaintiff making basis

6 (2014) 2 SCC 269

7 (1989) 3 SCC 612

8 (2014) 2 SCC 269

of declaration of title in his favour as it has held so by the first appellate court, as such, the first appellate Court was absolutely unjustified in granting decree in favour of the plaintiff on the basis of document Ex.P-1 i.e. copy of record-of-rights from the year 1967-1968.

18. In view of the aforesaid legal analysis, the judgment and decree passed by the first appellate Court is set aside and the judgment and decree passed by the trial Court is restored. The second appeal is consequently, allowed and the plaintiff's suit stands dismissed. The substantial question of law is answered accordingly. No cost(s).

19. A decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

