

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SECOND APPEAL No. 272 of 2002**

Shekh Mohammad S/o Tafajul Husain, aged about 67 years, R/o Village Mani, Tahsil Pratappur, District Surguja C.G.)

---- Appellant / Plaintiff

Versus

1. Mohammad Israiel (died) through legal heirs -

(1.1) Sajda Khatun D/o Mohd. Israiel, aged about 45 years, Village Domhat, Post Chandora, P.S. Chandora, Tahsil Pratappur, District Surguja (C.G.)

(1.2) Shabra Khatun, D/o Mohd. Israiel, aged about 35 years, Village Chalgali, Post Shankargarh, P.S. and Tahsil Shankargarh, District Surguja (C.G.)

(1.3) Mohd. Samiulla S/o Mohd. Israiel, aged about 32 years, Village, Post, P.S. Pratappur, District Surguja (C.G.)

(1.4) Sahnaj Praveen D/o Mohd. Israiel, aged about 30 years, Village Post – Dala, P.S. and Tahsil Chopal, District Sonbhadra (U.P.)

(1.5) Mohd. Aajam Noor S/o Mohd. Israiel, aged about 28 years, Village Post P.S. Pratappur, District Surguja (C.G.)

(1.6) Sahida Parveen D/o Mohd. Israiel, aged about 23 years, Village Chalgali, P.S. Post Tahsil Chalgali, District Surguja (C.G.)

(1.7) Sama Parveen D/o Mohd. Israiel, aged about 22 years, Village Post Dala, P.S. Tahsil Chopan, District Sonbhadra (U.P.)

(1.8) Aamna Parveen D/o Mohd. Israiel, aged about 19 years, Village Post P.S. Tahsil Pratappur, District Surguja (C.G.)

2. State of Chhattisgarh, through Collector, Surguja (C.G.)

---- Respondents

For Appellant	:	Mr. Surfaraz Khan, Advocate.
For Respondents	:	Mr. Ashok Kumar Shukla and Mr. Atanu Ghosh, Advocates.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

12/09/18

1. The substantial questions of law involved, formulated and to be answered by this Court in this plaintiff's second appeal are as under :-

“(1) Whether both the Courts below were justified in upholding the order dated 23.08.1995 passed by Upper Collector, Ambikapur, Surguja in Revision Case No. 6A/9/1992-93 cancelling the lease deed dated 16.11.1973 granted in favour of the plaintiff by exercising *suo moto* revisional power under Section 50 of the Chhattisgarh Land Revenue Code, 1959 ?

(2) Whether under the facts and circumstance of the case, the plaintiff has acquired his *Bhumiswami* right by virtue of order dated 19.09.1992 (Ex. P-4) passed under the provisions of the Chhattisgarh Land Revenue Code, 1959 by the Allotment Officer in Case No. 19/A-19/1991-92 ?

(3) Whether the plaintiff's suit is barred by jurisdiction as provided under Section 257 of the Chhattisgarh Land Revenue Code, 1959 ?”

2. The appellant / plaintiff herein filed a suit for declaration of title stating inter-alia that order of Additional Collector, Surguja dated 23.08.1995 cancelling the lease deed dated 16.11.1983 granted in his favour in exercise of suo-moto revisional jurisdiction under Section 50 of the Chhattisgarh Land Revenue Code, 1959 is null and void and permanent injunction be granted in his favour. The defendant No. 1 filed written statement but thereafter he proceeded ex-parte. The trial Court dismissed the suit finding that the order dated 23.08.1995 is not null and void and plaintiff is not in possession that suit land. The said finding of the judgment and decree of the trial Court was affirmed by the First Appellate Court

against which this second appeal under Section 100 of the CPC has been filed by the appellant / plaintiff, in which substantial question of law has been framed by this Court, which has been incorporated in the opening paragraph of this judgment.

3. Mr. Surfaraz Khan, learned counsel appearing for the appellant / plaintiff would submit that the two Courts below are unjustified in holding that the order dated 23.08.1995 passed by the Collector, Ambikapur cancelling the lease of the plaintiff dated 21.11.1973 in exercise of power conferred under Section 50 of the Land Revenue Code, 1959 (hereinafter referred to as, 'the Code') is unsustainable and bad in law and held that the *Bhumi-swami* right has already been conferred to the plaintiff on 19.09.1992 vide Annexure – P/4 by Allotment Officer. As such, the judgment and decree passed by the two Courts below be set aside and the suit be decreed in favour of the appellant / plaintiff.

4. Learned counsel for the respondents would support the impugned judgment and decree.

5. I have heard learned counsel for the parties.

6. The order granting lease was revoked by the Collector on 23.08.1995 that was sought to be challenged in the suit by seeking a declaration of the same to be null and void. Though, the declaration was sought about the order dated 23.08.1995 passed by the Collector but neither that said order was produced nor it was exhibited and it was also not proved in accordance with Section 78 of the Indian Evidence Act, 1872 (for brevity, 'Act of 1872') and in absence of production of order of SDO the same could not be

proved by plaintiff. The plaintiff was required to file the certified copy of the order and prove the same in accordance with law and get the order declared as null and void which was not done and as such, in absence of the production and proof of that order on record, the order of Additional Collector dated 23.08.1995 has rightly been not declared null and void by the trial Court and rightly been affirmed by the first appellate Court. The order of SDO has no force of law within the meaning of Section 57(1) of the Act of 1872 and judicial notice of it cannot be taken. Vide Exhibit – P/4, the *Bhumi-swami* right on the land which was earlier granted on lease to the petitioner has been revoked by the Collector. As such, the plaintiff cannot claim title on the basis of Exhibit – P/4 as original lease itself has been revoked. Both the Courts below have rightly not found the lease in favour of the plaintiff on the basis of Ex. P/4 and have concurrently found that plaintiff is not in possession of suit land and the plaintiff's suit is only for declaration of title and injunction and as such the suit is hit by proviso to Section 34 of the Specific Relief Act, 1963.

7. The suit and framed and filed is not shown to be expressly barred by Section 257 of Chhattisgarh Land Revenue Code, 1959.

8. As a fallout and consequence of the aforesaid discussion, the second appeal deserves to be and is hereby dismissed. A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge