

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SECOND APPEAL No. 147 of 2003**

Horilal S/o. Karmu Ganda, Aged about 53 years, Occupation –
Kotwar, Village- Ravankhodra, Tahsil & District – Raigarh,
Chhattisgarh.

----Appellant.

Versus

Tikaram S/o. Dukhiram Patel, Aged about 55 years, Occupation –
Agriculturist, R/o. Village. Ravankhodra, Tahsil & District, Raigarh,
Chhattisgarh.

----- Respondents

For Appellant	:	Mr. Awadh Tripathi, Advocate.
For Respondent	:	None.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****30/10/2018**

1. This is plaintiff's second appeal under Section 100 Code of Civil Procedure questioning the judgment and decree of the First Appellate Court by which the said Court has reversed the judgment and decree of the trial Court granting decree of declaration of title and permanent injunction in favour of the plaintiff.
2. Mr. Awadh Tripathi, learned counsel for the plaintiff/appellant would vehemently submits that the First Appellate Court is absolutely unjustified in setting aside the decree of the trial Court granting declaration of title and permanent injunction in his favour.
3. I have heard learned counsel for the appellant and perused the impugned judgment and records of both the Courts below.

4. The Plaintiff filed a suit for declaration of title and permanent injunction stating that he is title holder of suit land bearing khasra No. 323/2, area 0.049 hectare i.e. Abadi land, and he is in settled possession of the same.

5. The Trial Court decreed the suit of the plaintiff by holding that the suit land is abadi land though it is a Government land and further recorded a finding that the plaintiff's father has already sold the suit land in favour of Laxman Singh by sale deed dated 04/01/1958 (Exhibit D-1). That finding was not challenged by the appellant/plaintiff. The First Appellate Court in appeal preferred by the defendant held that the suit land has already been transferred by plaintiff's father in favour of Laxman Singh (Exhibit D-1) and the suit land being the Government land, the plaintiff has no title over the suit land. Even otherwise, the suit land is the Government land.

6. The two Courts have concurrently held that the plaintiff's father has already sold the suit land in favour of Laxman Singh (Exhibit D-1) and even otherwise suit land is Government land. The concurrent finding recorded by two Courts below is a finding of fact based on evidence available on record.

7. Mr. Awadh Tripathi now submits that he is in settled possession of the suit land. The plaintiff's suit was not for possession based on settled possession. It was the suit for possession based on title and consequent claim of permanent injunction.

4. In view of the finding recorded by two Courts that the plaintiff has no title over the suit land, I do not find any illegality or perversity in the impugned judgment passed by the First Appellate Court.

5. Accordingly, the second appeal is liable to be dismissed and it is hereby dismissed in limine without noticing to other side.

Sd /-
(Sanjay K. Agrawal)
Judge

Rohit/Jamal