

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.168 of 2004**

Bhagatram, Aged about 50 years, S/o. Ghasiram, Caste-Biyar, Occupation-cultivation, R/o. Vill. Belandiadih, Tahsil Janjgir, Dist. Janjgir-Champa (CG)

---- Appellant**Versus**

1(A). Dashrath alias Ludaru, Aged about 25 years, S/o. Ganeshram,

1(B). Badri Prasad, Aged about 48 years, S/o Ganeshram,

1(C). Lane Bai, Aged about 45 years, D/o Ganeshram,

1(D). Phool Bai, Aged about 42 years, D/o. Ganeshram

1(E). Narmada, Aged about 40 years, S/o. Ganeshram,

1(F). Bhuvan, Aged about 35 years, S/o. Ganeshram,

All Caste-Bind, R/o. Nangpura, Tahsil Janjgir, Distt. Janjgir-Champa (CG)

---- Respondents

For Appellant	: Mr.Ashish Shrivastava and Mr.Anurag Verma, Advocates
For Respondents	: Mr.Ram Kumar Tiwari, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Judgment on Board****09/10/2018**

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

“Whether the impugned judgment and decree has been passed ignoring the material evidence available on record ?”

2. The essential facts required to be noticed in order to answer the substantial question of law are as under:-

(I) The appellant/plaintiff filed a suit for declaration of title and permanent injunction stating inter-alia that he is title-holder of the suit land bearing khasra No.6/81, area 2.75 acres of land, in which he had sown the crops, which was harvested by the defendants forcibly leading to filing of the suit for declaration of title and permanent injunction.

(ii) The defendants filed their written statement stating inter-alia that the plaintiff got only 0.75 acre of land on allotment through the Forest Department and therefore, he is not entitled for decree as claimed.

(iii) The trial Court after appreciating oral and documentary evidence available on record held that the plaintiff is government lessee of only 0.75 acre of land granted by the Forest Settlement Officer, Bilaspur and he is not entitled for decree of declaration of title and permanent injunction and dismissed the suit by the judgment and decree dated 26.9.2001.

(iv) On an appeal being preferred by the plaintiff, the First Appellate Court affirmed the judgment and decree of the trial Court holding that the plaintiff being government lessee of 0.75 acre of land under Section 181 of the M.P. Land Revenue Code, 1959

(hereinafter called as "Code") cannot be granted bhumiswami rights.

(v) Questioning the judgment and decree of the First Appellate Court, this second appeal under Section 100 of the Code of Civil Procedure has been filed by the plaintiff, in which substantial question of law has been framed by this Court, which has been set-out in opening paragraph of this judgment.

3. The appellant/plaintiff has also filed an application under Order 41 Rule 27 of the CPC for bringing the documents Exs.D/1 and D/2 on record showing that he has been granted bhumiswami rights.

4. Mr.Anurag Verma, learned counsel for the appellant/plaintiff, would submit that both the Courts below failed to consider the material available on record to hold that that the appellant is bhumiswami of 2.75 acre of land, therefore, the judgment and decree passed by both the Courts below are liable to be set aside.

5. On the other hand, Mr.Ram Kumar Tiwari, learned counsel for the respondents, would support the impugned judgment and decree.

6. I have heard learned counsel appearing for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.

7. The trial Court and the First Appellate Court have

clearly recorded a finding that the plaintiff is only government lessee of 0.75 acre of land vide Ex.D/3 along with other persons at village Belandiadih and being government lessee he cannot be conferred with bhumiswami rights by granting decree of declaration of title in his favour. The finding recorded by the trial Court as well as by the First Appellate is clearly supportable from document Ex.D/3, which is temporary lease for village Belandiadih in which the appellant's name has been shown at Serial No.4 granting 0.75 acre of land. Thus, the concurrent finding recorded by two Courts below is the finding of fact based on material available on record. I do not find any illegality or perversity in the said finding.

8. So far as the application under Order 41 Rule 27 of the CPC is concerned, it is liable to be rejected as only photocopies of documents have been filed, which are inadmissible in evidence for want of production of original documents. I do not find any merit in this application.

9. Accordingly, the substantial question of law is answered against the plaintiff and the second appeal is dismissed. No cost(s).

10. A decree be drawn up accordingly.

Sd/-

(Sanjay K Agrawal)
Judge

B/-