

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****WPC NO.1161 of 2016**

1. Harkesh Sahu S/o. Prasad Sahu, aged about 46 years,
2. Balkrishna Sahu, S/o. Aliram Sahu, aged about 48 years,
3. Shyamlal Sahu, S/o. Vishwanath Sahu, aged about 53 years,
4. Shivkailash, S/o. Nanda Rajwar, aged about 58 years,
5. Chhaganram Sahu, S/o. Subran Sao, aged about 50 years,

All above R/o. Surajpur, Tahsil Surajpur, Police Station and Post Surajpur,
Civil and Revenue District Surajpur (CG)

----Petitioners**Versus**

1. State of Chhattisgarh, through Secretary, Revenue Department,
Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur,
District Raipur (CG)
2. Commissioner, Surguja Division, Ambikapur, District Surguja (CG)
3. Sub-Divisional Officer, Surajpur, District Surajpur (CG)
4. Tahsildar, Surajpur, District Surajpur (CG)
5. Collector, Surajpur, District Surajpur (CG)
6. Ambika Prasad Rajwar, S/o Ramdev Rajwar, aged about 57 years,
R/o. Badkapara (wrongly typed as Badpara), Tahsil Surajpur, Police
Station and Post Surajpur, Civil and Revenue District Surajpur (CG)

---- Respondents

For Petitioners	:	Mr.Manoj Paranjape, Advocate
For Respondents No.1 to 5	:	Mr.R.N.Pusty, Govt.Advocate
For Respondent No.6	:	Mr.Sunil Otواني, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****18/07/2018**

1. Respondent No.6 herein filed an application under Sections 114 and 115 of the Chhattisgarh Land Revenue Code, 1959 (hereinafter called as 'Code') before the Tahsildar, Surajpur for correction in the original map on the basis of demarcation dated 3.5.2006, which was granted by the Tahsildar, Surajpur by order

dated 31.7.2006. The petitioners preferred the appeal before the Sub Divisional Officer, Surajpur against that order, that appeal was granted by the Sub Divisional Officer, Surajpur, against which, respondent No.6 preferred second appeal before the Additional Commissioner, Surguja Division, Ambikapur, which was allowed by the Additional Commissioner holding that the petitioners were not party to the application and therefore, the Sub-Divisional Officer ought not to have entertained the appeal without leave having been granted, the said order was affirmed by the Board of Revenue in revision preferred by the petitioners, against which, this writ petition has been preferred.

2. Learned counsel for the petitioners would submit that if the correction is allowed to be made in the revenue records, position of the petitioners' land would be adversely changed, therefore, the orders passed by the Additional Commissioner, Surguja Division, Ambikapur and the Board of Revenue deserve to be set aside. He would also submit that the Tahsildar has no jurisdiction to hear the matter.
3. On the other hand, learned Government Advocate for respondents No.1 to 5/State, would support the impugned orders.
4. Learned counsel for respondent No.6 would submit that on the basis of demarcation and application for correction, records have been corrected.
5. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also gone through the records with utmost circumspection.
6. It is not in dispute that the Tahsildar, Surajpur did not implead the petitioners herein before passing the order of correction and the

appeal preferred by the petitioners was allowed on the ground that the petitioners are necessary party and they were not afforded an opportunity of hearing.

7. It appears from the record that the petitioners are also adjoining owners of the land bearing khasra No.58, therefore, the petitioners who can be said to be aggrieved in an application for correction of map filed under Sections 114 and 115 of the Code, therefore, they ought to have impleaded as party respondents/non-applicants in the said application and ought to have granted opportunity of hearing.
8. The short question for consideration would be whether the petitioners were entitled to maintain the appeal having appealable interest in the subject dispute with the leave of the Court.
9. It is well-settled law; right of appeal is not a natural or inherent right. It is well-settled that an appeal is a creature of statute and there is no such right to file an appeal unless it is given clearly and in express terms by a legislation.

9.1 In **M. Ramanarain Pvt. Ltd. v. State Trading Corporation of India Ltd.**¹, the Supreme Court held as under:--

"16. The right to prefer an appeal is a right created by statute. No party can file an appeal against any judgment, decree or order as a matter of course in the absence of any suitable provision in some law conferring on the party concerned the right to file an appeal against any judgment, decree or order."

9.2 In **Dayawati v. Inderjit**², speaking for the Supreme Court, Hidayatullah, J. (as He then was) stated:--

"10.....An appeal has been said to be 'the right of entering a Superior Court, and invoking its aid and interposition to redress the error of the Court below', the only difference between a suit and an appeal is that an

¹ (1983) 3 SCC 75

² AIR 1966 SC 1423

appeal 'only reviews and corrects the proceedings in a cause already constituted but does not create the cause'."

9.3 As a general principle of law, however, before an appeal can be filed, two conditions must be satisfied:--

(i) The subject-matter of appeal must be a 'decree', i.e., a conclusive determination of "the rights of the parties with regard to all or any of the matters in controversy in the suit"; and

(ii) The party appearing must have been adversely affected by such determination.

Thus, only a party to a suit/application adversely affected by a decree or any of his representatives-in-interest may file an appeal. But, a person who is not a party to a decree or order may, with the leave of the Court, prefer an appeal from such decree or order if he is either bound by the decree or order or is aggrieved by it or is otherwise prejudicially affected by it.

10. Generally speaking, a decision cannot be said to adversely affect a person unless it will operate as res judicata against him in any future suit. In order to decide whether a decision will operate as res judicata and will thus adversely affect a party, the substance of the judgment and decree, and not the form thereof must be considered. The question whether a party is adversely affected by a decree is a question of fact to be determined in each case according to its particular circumstances.

11. In the leading decision in **Adi Pherozshah Gandhi v. H.M. Seervai**³, speaking for the majority, Mitter, J. stated:--

"Generally speaking, a person can be said to be aggrieved by an order which is to his detriment, pecuniary or otherwise, or causes him some prejudice in

³ (1970) 2 SCC 848

some form or other. A person who is not a party to a litigation has no right to appeal merely because the judgment or order contains some adverse remarks against him. But, it has been held in a number of cases that a person who is not a party to a suit may prefer an appeal with the leave of the Appellate Court and such leave would not be refused where the judgment would be binding on him under Explanation VI to Section 11 of the Code of Civil Procedure."

12. The Supreme Court in the matter of **Smt. Jatan Kanwar Golcha v. M/s. Golcha Properties Private Ltd. (In Liquidation)**⁴, has held as under:--

"3.....In our opinion, apart from Rule 130 to which reference has been made by the High Court, the Official Liquidator as well as the learned Company Judge were bound by the rules of natural justice to issue a notice to the appellant and hear her before making the order appealed against. If there was default on their part not following the correct procedure it is wholly incomprehensible how the appellant could be deprived of her right to get her grievance redressed by filing an appeal against the order, which had been made in her absence and without her knowledge. It would be a travesty of justice if a party is driven to file a suit, which would involve long and cumbersome procedure when an order has been made directly affecting that party and redress can be had by filing an appeal, which is permitted by law. It is well-settled that a person who is not a party to the suit may prefer an appeal with the leave of the Appellate Court and such leave should be granted if he would be prejudicially affected by the judgment."

13. Likewise, the Supreme Court in the matter of **State of Punjab (now Haryana) and others v. Amar Singh and another**⁵, has held as under:--

"84. Firstly, there is a catena of authorities, which following the doctrine of Lindley, L.J., In re : Securities Insurance Co., (1894) 2 Ch 410, have laid down the rule that a person, who is not a party to a decree or order may with the leave of the Court, prefer an appeal from such decree or order if he is either bound by the order or is aggrieved by it or is prejudicially affected by it. As a rule, leave to appeal will not be refused to a person, who might have been made ex nominee, a party--see:

⁴ (1970) 3 SCC 573

⁵ AIR 1974 SC 994

Province of Bombay v. W.I. Automobile Association, AIR 1949 Bom. 141; Heera Singh v. Veerka, AIR 1958 Raj 181 and Shivaraya v. Siddamma, AIR 1963 Mys. 127; Executive Officer v. Raghavan Pillai, AIR 1961 Ker 114, In re: B, an Infant, (1958) 1 QB 12; Govinda Menon v. Madhavan Nair, AIR 1964 Ker 235."

14. From the above general principles, it can be said that the following persons may prefer an appeal:--

(i) A party to the suit/application who is aggrieved or adversely affected by the decree/order, or if such party is dead, his legal representatives;

(ii) A person claiming under a party to the suit or a transferee of the interest of such party, who, so far as such interest is concerned, is bound by the decree/order, provided his name is entered on the record of the suit/application;

(iii) A guardian ad litem appointed by the Court in a suit by or against a minor or a lunatic;

(iv) Any other person, with the leave of the Court, if he is adversely affected by the decree/order.

15. Reverting to the facts of the present case after following the principle of law laid down by the Supreme Court in the above-stated judgments (supra), it is quite vivid that the petitioners having appealable interest in the subject dispute ought to have heard by the Tahsildar, which was not done and when the appeal was preferred that was allowed by the Sub-Divisional Officer, but it has been set aside by the Additional Commissioner holding that leave to appeal has not been obtained and order of the Additional Commissioner has been affirmed by the Board of Revenue in revision. Once appeal has been entertained by the Sub Divisional Officer and it has been allowed by the said authority, then though the leave was not expressly granted, but it can be held to be impliedly granted as the appeal itself was allowed, as such, both the authorities i.e. Additional Commissioner and the Board of

Revenue are absolutely unjustified in setting aside the order passed by the Sub-Divisional Officer.

16. Accordingly, order dated 29.1.2012 (Annexure P/14) passed by the Additional Commissioner, Surguja Division, Ambikapur in Revenue Appeal Case No.302/A-6A/2008-09 and order dated 29.3.2016 (Annexure P/1) passed by the Board of Revenue in Revision Case No.R.N./26/R/A-6/40/2013 are hereby set aside and order of the Sub-Divisional Officer, Surajpur dated 31.10.2007 (Annexure P/13) is partly upheld. The matter is remitted to the Tahsildar, Surajpur for hearing the application for correction in the original map after impleading the petitioners as party non-applicants in the said application. Such an application will be considered and decided by the said authority within a period of three months from the date of receipt of certified copy of this order. The petitioners/non-applicants would be entitled to file reply and respondent No.6 would also be entitled to file counter-reply, if any.

17. The writ petition is allowed to the extent indicated hereinabove. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-