

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 98 of 2006**

Ramsevak Maar, aged about 52 years, Son of Late Shri Aklu Maar, Occupation Agriculturist, Resident of Village Surra, Tahsil Pal, District Surguja (C.G.)

----Appellant/Plaintiff

Versus

1. Shri Bakhouri Nai, son of Late Shri Bechan Nai, aged about 60 years;
2. Shri Basant Nai, son of Shri Bakhouri Nai, aged about 42 years;
3. Chhotelal Nai, son of Shri Bakhouri Nai, aged about 45 years;
4. Gopal Nai, son of Shri Bakhouri Nai, aged about 35 years;
5. Udesh Nai, son of Shri Bakhouri Nai, aged about 20 years;
6. Paritosh Sardar, Son of Late Shri Ghatak Sardar, aged about 40 years;
7. Lon @ Lavan Sardar, Son of Late Shri Ghatak Sardar, aged about 30 years;
8. Nirmal Sardar, Son of Late Shri Ghatak Sardar, aged about 30 years;

All are agriculturist, and Resident of Village Jawahar Nagar, Tahsil Pal, District Surguja (C.G.)

9. Sukhram Nagesiya, son of Shri Ramroop Nagesiya, aged about 47 years, Occupation Agriculturist, Resident of Village Surra, Tahsil Pal, District Suguja (C.G.) (Plaintiff No. 2)

----Respondents/defendants.

For Appellant	: Mr. V.K. Pandey, Advocate.
For Respondents	: None.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

09/10/2018

(1) This is plaintiff's Second Appeal filed under Section 100 of CPC against the judgment and decree dated 29.11.2005, passed by 1st Additional District Judge, (FTC), Ramanujganj, District Surguja, in Civil Appeal No. 19-A/2003 whereby the first appellate Court has though

partly interfered with the decree but finally affirmed the judgment and decree passed by the trial Court.

(2) Learned counsel appearing for the appellant/plaintiff would submit that both the courts below are unjustified in dismissing the suit and the appeal involves substantial question of law for consideration.

(3) The plaintiff filed a bare suit for permanent injunction restraining the defendants from interfering with the mound (मेढ़) of the suit tank. The said civil suit was dismissed by the trial Court negating all the pleas raised on behalf of petitioner/plaintiff No.1 and even it was held that the suit is bad for non-joinder of the necessary party i.e. the State Government. On appeal being preferred, the first appellate Court though held that suit is maintainable and the required court fee has been paid but the first appellate Court held that as the suit tank was constructed by the State Government, the State Government is necessary party under Order 1 Rule 3 (b) of the Code of Civil Procedure, 1908.

(4) The first appellate Court though reversed the finding recorded by the trial Court on the other grounds but maintained the finding that State Government is necessary party under Order 1 Rule 3(b) of the Code of Civil Procedure in the suit.

(5) The concurrent findings recorded by both the courts below holding the suit is bad for non joinder of the necessary party i.e. State Government is a finding of fact based on material available on record and I do not find it either perverse or contrary to record and no question of law much less substantial question of law is involved in this appeal.

(6) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

