

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.517 of 2005

Anjore Das, S/o Ram Ratan, Aged about 48 years, R/o Village Khunta,
Tehsil Pandariya, Distt. Kawardha (C.G.)

(Plaintiff No.1)
---- Appellant

Versus

1. State of Chhattisgarh, Through Collector, Kawardha
2. a) Agautin Bai, Wd/o Bhagat Ram, aged about 75 years,
b) Rupa Bai, Wd/o Bhagat Ram, aged about 70 years,
c) Kapil, S/o Bhagat Ram, Aged about 60 years,
d) Jeevan, S/o Bhagat Ram, Aged about 35 years,
e) Milan, S/o Bhagat Ram, Aged about 40 years,
f) Radhe, S/o Bhagat Ram, Aged about 35 years,
g) Rama Bai, W/o Gokul Das

Respondents 2a, 2e & 2f are R/o Village Khunta, Tahsil Pandariya

Respondents 2b to 2d are R/o Village Lokhan

Respondent 2g is R/o Village Lalpur, Tahsil Pandariya, Distt.
Kawardha (C.G.)

3. Guhira, S/o Kariya, Aged about 58 years, R/o Village Khunta, At
present R/o Village Lokhan, Tahsil Pandariya, Distt. Kawardha (C.G.)
(Defendants)
4. Ramratan, S/o Uderam, Aged about 63 years,
(Plaintiff No.2)
5. Jharu, S/o Uderam, Aged about 68 years,
(Plaintiff No.3)

Respondents 4 & 5 are R/o Village Khunta, Tahsil Pandariya, Distt.
Kawardha (C.G.)

---- Respondents

For Appellant: Mr. Akash Pandey, Advocate.

For Respondent No.1 / State: -

Mr. Arun Sao, Deputy Advocate General and
Mr. Adhiraj Surana, Deputy Govt. Advocate.

For Respondents No.2 to 5: -

None present.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

24/10/2018

1. The substantial question of law involved, formulated and to be answered in this plaintiff No.1's second appeal is as under: -

“Whether both the Courts below were justified in holding that the suit filed by the plaintiffs was not maintainable in view of the bar contained in Section 257(y) of the Chhattisgarh Land Revenue Code?”

(For sake of convenience, parties would be referred hereinafter as per their status shown in the trial Court.)

2. Plaintiff No.1 Anjore Das and two others filed a suit for declaration of their title and permanent injunction stating inter alia that the suit tank bearing Khasra No.159, area 3.14 acres, and embankment of the suit tank bearing Khasra No.143, area 10.63 acres, was given to the plaintiffs in partition prior to the Abolition of Proprietary Rights and as such, they are the owners and title holders of the suit land which has been vested with the State Government under Section 251 of the Chhattisgarh Land Revenue Code, 1959 (for short, 'the Code') contrary to law and therefore title be declared in their favour and injunction be granted. In the said suit, defendant No.1 and other defendants remained ex parte.
3. The trial Court after appreciating oral and documentary evidence on record held that the suit tank with its embankment were vested with the State Government by the order of the competent authority under Section 251 of the Code vide order dated 19-2-1964 (Ex.P-9) and by virtue of the provisions contained in Section 257(y) of the Code, the jurisdiction of civil court is barred which has been upheld by the first appellate Court and in second appeal, substantial question of law has

been framed which has been set-out in the opening paragraph of this judgment.

4. Mr. Akash Pandey, learned counsel appearing for the appellant / plaintiff No.1, submits that the concurrent finding recorded by the two Courts below are perverse and contrary to the record.
5. Mr. Arun Sao and Mr. Adhiraj Surana, learned State counsel, would support the impugned judgment & decree.
6. Undisputedly, the suit tank along with its embankment was vested with the State Government by the order of the competent authority in exercise of power conferred under Section 251 of the Code by order dated 19-2-1964 (Ex.P-9). The instant suit for declaration of title and injunction was filed by the plaintiffs in which simple declaration of title in their favour and injunction was sought. Order dated 19-2-1964 (Ex.P-9) has not been questioned by the plaintiffs expressly though a ground has been taken and no relief of setting aside of the order dated 19-2-1964 has been sought for. It ought to have been challenged expressly.
7. At this stage, it would be apt to notice clause (y) of Section 257 of the Code which reads as under: -

“257. Exclusive jurisdiction of revenue authorities.— Except as otherwise provided in this Code, or in any other enactment for the time being in force, no Civil Court shall entertain any suit instituted or application made to obtain a decision or order on any matter which the State Government, the Board, or any Revenue Officer is by this Code, empowered to determine decide or dispose of, and in particular and without prejudice to the generality of this provision, no Civil Court shall exercise jurisdiction over any of the following matters:—

(y) any decision regarding vesting of tanks in State Government under section 251 and any claim against the State Government arising thereunder;”

8. A focused perusal of clause (y) of Section 257 of the Code would

show that any decision regarding vesting of tanks in State Government under Section 251 of the Code and any claim against the State Government arising thereunder is expressly barred.

9. Reverting to the facts of the present case, in the civil suit, the decision of the competent authority dated 19-2-1964 (Ex.P-9) was sought to be impliedly challenged though no express challenge was made and the claim was made to the suit tank which has already been vested with the State Government vide Ex.P-9 as such, the suit was barred by the aforesaid provision. The trial Court as well as the first appellate Court rightly held the suit to be barred by Section 257(y) of the Code.
10. There is yet one another reason for holding the suit to be barred, as the order of vesting dated 19-2-1964 was not expressly challenged by the plaintiffs which could have been challenged by claiming further relief of setting aside of the said order by virtue of the proviso to Section 34 of the Special Relief Act, 1963 and therefore the suit as framed and filed by the plaintiffs is also hit by proviso to Section 34 of the Special Relief Act, 1963.
11. The Supreme Court in the matter of **Jugraj Singh and another v. Jaswant Singh and others**¹, dealing with similar situation, held as under: -

“13. ... It will be noticed that they neither asked for the cancellation of the order of the Collector nor for any injunction, two of the reliefs which they were entitled to ask in the case in addition to the declaration. Such a suit would be hit by Section 42 of the Specific Relief Act and we would be quite in a position to deny them the declaration without these specific reliefs. Indeed they had only to ask for setting aside of the order.”

12. In view of the aforesaid discussion, both the Courts below have rightly held the suit to be barred by Section 257(y) of the Code as well as the

¹ 1970(2) SCC 386

proviso to Section 34 of the Specific Relief Act, 1963. I do not find any merit in the second appeal. The substantial question of law is answered in affirmative. The second appeal deserves to be and is accordingly dismissed. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma