

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No.384 of 2018**

Ramavtar Agrawal, S/o Late Bhagwan Das Agrawal, Aged about 65 years,
R/o Sargaon, Tahsil Pathariya, District Mungeli (CG)

--- Appellant

Versus

Smt. Shanti Bai W/o Late Shiv Kumar aged about 62 years, R/o Sargaon,
Tahsil Pathariya, District Mungeli (CG)

---- Respondent

For Appellant	:	Mr.K.A.Ansari, Senior Advocate with Mr.Kripesh G. Kela, Advocate
For Respondent	:	Mr.F.S.Khare, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

07/12/2018

1. This is the defendant's second appeal under Section 100 of the CPC by which the First Appellate Court has affirmed the judgment and decree of the trial Court decreeing the suit of the plaintiff directing delivery of possession of the suit land bearing khasra No.1715/1-G and restrained the defendant from interfering with use of the said house.
2. Mr.K.A.Ansari, learned Senior Counsel for the appellant/defendant, would submit that the judgment and decree passed by the trial Court as affirmed by the First Appellate Court is perverse as a decree (Ex.D/3) passed in previous Suit No.25A/99 would operate as res-judicata as it was rendered between the parties and therefore, the suit is liable to be dismissed as the second appeal involves

substantial question of law for determination.

3. I have heard learned counsel for the appellant/defendant, perused the impugned judgment and decree and records of the Courts below.
4. The plaintiff filed a suit for possession and permanent injunction stating inter-alia that she is owner and title-holder of the suit house bearing khasra No.1715/1-G, as such, she is entitled for recovery of possession and permanent injunction. The appellant/defendant set up a plea of adverse possession and res-judicata stating inter-alia that in Civil Suit No.25A/99 between the same parties, vide Ex.D/3 a decree was passed in his favour, therefore, principle of res-judicata would be applicable, as such, the suit land is government land and he is continuing his grain shop since 1978 by constructing house and he has obtained government lease.
5. The trial Court recorded a finding that earlier Civil Suit No.25A/99 was with relation to khasra No.1928/1, which is different from the present land bearing khasra No.1715/1-G and the suit land is different and a decree has been granted in favour of the appellant/defendant vide Ex.D/3. The trial Court relied upon Ex.P/1 granted by the competent revenue officer in favour of the plaintiff. That finding has been affirmed by the First Appellate Court. Thus, both the Courts below have concurrently recorded a finding that the suit land bearing khasra No.1715/1-G is owned by the plaintiff pursuant to Bhumiswami right granted by the competent authority in her favour vide Ex.P/1 and by which she is owner and title-holder of

the suit land and earlier suit is with relation to different land bearing khasra No.1928/1, as such, both the Courts below have rightly held that principle of res-judicata is not applicable to the facts of the present case.

6. Ex.P/1 is the document by which she has been granted bhumiswami right by the competent authority. Both the Courts below have rightly held the plaintiff to be owner of the suit land. Thus, the finding of fact recorded by two Courts below that the plaintiff is title-holder of the suit land pursuant to Ex.P/1 and principle of res-judicata is not applicable to the facts of the present case is the finding of fact based on evidence available on record, which is neither perverse nor contrary to record. I do not find any merit in this second appeal and even I do not find any substantial question of law for determination.
7. Accordingly, the second appeal is liable to be and is hereby dismissed in *limine*. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-