

HIGH COURT OF CHHATTISGARH, BILASPUR**CIVIL REVISION No. 129 of 2018**

1. Saubhagya Dubey S/o Late Rahul Dubey Aged About 25 Years R/o Near Shatri Chowk, Shivrinarayan Road, Akaltara, Tahsil Akaltara District Janjgir Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh[Defendant No. 1]
2. Saujanya Dubey S/o Late Rahul Dubey Aged About 30 Years R/o Near Shastri Chowk Shivrinarayan Road Akaltara Tahsil Akaltara District Janjgir Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh[Defendant No. 2]
3. Smt. Mandakini Dubey Wd/o Late Rahul Dubey Aged About 60 Years R/o Near Shatri Chowk Shivrinarayan Road Akaltara Tahsil Akaltara District Janjgir Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh[Defendant No. 3]
4. Akanksha Dubey D/o Late Rahul Dubey Aged About 32 Years Through Saubhagya Dubey S/o Rahul Dubey R/o Near Shatri Chowk Shivrinarayan Road Akaltara Tahsil Akaltara District Janjgir Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh[Defendant No. 4]

---- Applicants/Defendants**Versus**

1. Badri Singh S/o Kapil Singh Aged About 47 Years R/o Near Ambedkar Chowk Post Akaltara Tahsil Akaltara District Janjgir Champa Chhattisgarh.....[Plaintiff]
2. Smt. Kalyani Devi W/o Late Jagdish Singh Aged About 60 Years R/o Ward No. 7 Near Sabji Mandi Main Road Akaltara Distict Janjgir Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh[Defendant No. 5]
3. Shivendra Bahadur Singh S/o Late Jagdish Singh Aged About 35 Years R/o Ward No. 7 Near Sabji Mandi Main Road Akaltara Distict Janjgir Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh[Defendant No. 6]
4. State Of Chhattisgarh Through Collector Janjgir Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

---- Respondents/Defendants

For Applicants : Mr. Dr. Kumaresh Tiwari, Advocate.
 For Respondent No.4/State: Mr. Rahul Tamaskar, PL.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

11/12/18

1. The respondent No. 1/plaintiff filed a civil suit for declaration of title stating that he is the title holder and in possession of the suit land bearing Khasra No. 1266 area 1.18 acres and land bearing Khasra No. 1267/1 area 42 decimal and Khasra No. 1267 total 45 decimal is a government land in which temporary injunction be granted to him restraining defendants No. 1 to 6. In that civil suit, the present applicants/defendants filed an application under Order 7 Rule 11 of CPC stating *inter-alia* that the civil suit is barred by Section 257(x) of Chhattisgarh Land Revenue Code, 1959 (*for brevity, 'the Code of 1959'*) and as such the jurisdiction of civil Court is barred which has been answered in negative by the trial Court against which this writ petition has been preferred.

2. Mr. Kumaresh Tiwari, learned counsel appearing for the applicants/defendants would submit that the civil suit is fully barred by the provisions contained in Section 257(x) of the Code of 1959 and, therefore, the trial Court is absolutely unjustified in rejecting the application of defendants under Order 7 Rule 11 (d) of CPC, as such the impugned order is liable to be set aside.

3. Section 257(x) of the Code provides 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.-

(a) to (w) xxx xxx xxx

(x) any decision regarding reinstatement of a Bhumiswami improperly dispossessed under Section 250;

[(x-i) any decision regarding confinement in civil prison under Section 250-A.

(x-ii) any decision regarding delivery of actual possession of land to the Bhumiswami or the Government Lessee under Section 250-B;]

.....”

4. Bar created under Section 257(x) of the Code was considered by the Supreme Court in **Rohini Prasad and others v. Kasturchand and another**¹ their Lordships relying on Full Bench decision of Madhya Pradesh High Court in the matter of **Ramgopal v. Chetu**², it was held as under:-

“8.We find there have been consistent decisions of the Madhya Pradesh High Court holding that the determination of the question of title is the province of the civil court and unless there is any express provision to the contrary, exclusion of the civil court cannot be assumed or implied. A Full Bench of the Madhya Pradesh High Court in Ramgopal v. Chetu [1976 RN 146] was considering the question whether the civil court cannot take cognisance of a suit instituted by a bhumiswami on the basis of his title against the trespassers. The Full Bench repelled the argument that in proceedings under Section 250 of the Code, since the Revenue Authority has no jurisdiction to go into the question of title, it

1 (2000) 3 SCC 668

2 1976 RN 146

would lead to anomalous results if again it is held that the civil court has jurisdiction to decide any question relating to the title. The Full Bench observed:

“Under the general law, a suit for possession based on title can be instituted in the civil court within 12 years from the date of dispossession. The principle that possession must follow title has received greater weight and sanctity when the distinction between the scope and effect of Article 142 and those of Article 144 of the Limitation Act, 1908, has been watered down and simpler provisions have been substituted in Articles 64 and 65 of the Limitation Act of 1963. It will be anomalous to read Section 250 as providing for a suit for possession based on title, which is to be instituted within two years only. It will entail a fantastic result that if a suit is not brought within two years under Section 250, the bhumiswami's right will be extinguished, because by virtue of Section 26 of the Limitation Act, if a suit for possession is not instituted within the period of limitation prescribed therefor, not only the remedy is barred but the right is also extinguished. Section 26 is an exception to the general rule that limitation bars the remedy but does not extinguish the right.”

The Full Bench then went to hold:

“The remedy provided in Section 250 of this Code can be resorted to by a bhumiswami by an application to the Tahsildar. He has to show either (1) that he was dispossessed by the non-applicant otherwise than in due course of law, or (2) that he was dispossessed within two years from the date on which the possession of such person became unauthorised (although initially the possession of that person may be authorised). Thus, clearly enough, this section provides for a remedy at the hands of the Tahsildar for restoration of possession, when a bhumiswami is improperly dispossessed, that is, without due process of law. Clause (x) of Section 257 excludes the jurisdiction of the civil court to challenge ‘any decision regarding reinstatement of a bhumiswami, improperly dispossessed under Section 250’. In both these provisions the subject-matter of inquiry is possession not title.

Determination of the question of title is the province of the civil court and unless there is any express provision to the contrary, exclusion of the jurisdiction of the civil court cannot be assumed or implied.”

In three different appeals coming to the Madhya Pradesh High Court, Hon'ble Judges sitting singly have consistently held that the civil suit of possession based on title is triable by the civil court. That being the law laid by the High Court of Madhya Pradesh while interpreting the Code which applies to the State of Madhya Pradesh and having held the field for all these years, it is not desirable for the Supreme Court to give a different interpretation and to upset the settled law.....”

5. Reverting to the facts of present case, it is *quite vivid* that plaintiff has not questioned the order of revenue court passed under Section 250 of the Code, but has filed the instant suit for declaration of his title and asserting his right to use the government land as road and also claimed permanent injunction which cannot be said to be barred by Section 257(x) of Code. The trial court has rightly rejected the said application, I do not find any merit in the application, civil revision deserves to be and accordingly dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge