

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.204 of 2005

Banarshi Das S/o. Tej Das, Aged about 50 yrs, Occupation-Agriculture,
Resident of Village Kasalgiri, P.S. Jainagar, Tahsil Surajpur, District
Surguja (CG)

---- Appellant/Plaintiff

Versus

1. Gohan Das S/o Noharsay, Caste-Rajwar, Aged about 30 years, R/o
Village Kasalgiri, P.S. Jainagar, Tah-Surajpur, Distt. Surguja (CG)
2. State of Chhattisgarh Through Collector, District Surguja (CG)

---- Respondents

For Appellant/Plaintiff	:	Mr.Ashok Kumar Shukla, Advocate
For Respondent No.1/Defendant:		Mr.Aditya Chopra, Advocate
For Respondent No.2	:	Mr.Akash Pandey, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

30/07/2019

1. The substantial questions of law involved, formulated and to be
answered in this plaintiff's second appeal are as under: -

“1. Whether the instant suit for declaration of title and
injunction against private party was barred ?

2. Whether correction in revenue record will amount a
dispute under Section 57 of the Chhattisgarh Land Revenue
Code?”

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

2. The plaintiff filed a suit for declaration of title and injunction and also for
declaring the order dated 5.11.99 passed by the Assistant Settlement
Officer, Ambikapur as illegal and he be declared title-holder basically on

the ground that he has perfected his title over the suit land by way of adverse possession and order dated 5.11.99 passed by the Assistant Settlement Officer, Ambikapur is illegal, in which defendants were proceeded ex-parte. The suit was dismissed by the trial Court finding that the Court has no jurisdiction to try the suit, which has been upheld by the first appellate Court, against the judgment and decree of the first appellate Court, this second appeal under Section 100 of the Code of Civil Procedure, 1908 has been filed by the appellant/plaintiff, in which, substantial questions of law have been formulated and set-out in the opening paragraph of this judgment.

3. Mr.Ashok Kumar Shukla, learned counsel for the appellant/plaintiff, would submit that both the Courts below were concurrently erred in holding that the suit was barred by law including under Section 57 of the Chhattisgarh Land Revenue Code, 1959 (hereinafter called as “the Code”) as the order of the Assistant Settlement Officer was admittedly in violation of principle of natural justice and therefore, it could have been entertained and declaration could have been granted, as such, the judgment and decree of both the Courts below deserve to be set aside.
4. Mr.Aditya Chopra, learned counsel for respondent No.1/defendant, would support the impugned judgment and decree.
5. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and went through the records with utmost circumspection.
6. Admittedly, the suit property is recorded in government records as

“Chhote Jhad Ka Jungle”, to which defendant No.1 claimed before the Assistant Settlement Officer to be his own, whereas the Assistant Settlement Officer by order dated 5.11.99 found it to be “Chhote Jhad Ka Jungle” and therefore, he directed to be recorded in the name of the State Government. That order was assailed branding the same as illegal by the plaintiff, but neither original nor certified copy of that order was produced or exhibited to demonstrate that he was not provided with an opportunity of hearing and order is illegal though defendant No.1 and the State Government proceeded ex-parte before the trial Court. The plaintiff was required to file and establish that the order passed by the Assistant Settlement Officer is in violation of principle of natural justice though both the Courts below have held the suit to be barred by limitation taking into consideration that the suit land is recorded as “Chhote Jhad Ka Jungle” and the plaintiff claimed the declaration on the basis of adverse possession by pleading that he is in possession of the suit land for 50 years and therefore, his adverse possession has ripened into ownership, which has rightly not been granted to him in light of judgment of the Supreme Court in the matter of Gurdwara Sahib v. Gram Panchayat Village Sirthala and another¹, as such, I am of the opinion that since the suit land is recorded as “Chhote Jhad Ka Jungle”, as such, it is forest land, therefore, decree could not be granted in view of the provisions contained in Section 2 of the Forest Conservation Act, 1980 and it has not been established that order was passed by the Assistant Settlement Officer in violation of principle of natural justice. So,

1 (2014) 1 SCC 669

substantial questions of law as framed do not arise for consideration.

7. For the reasons mentioned hereinabove, the second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).
8. Decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-