

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 176 of 2005**

Bhikharicharan (dead) through LRs:-

- (i) Smt. Shakuntala Satpathi, aged about 65 years, Widow of Late Bhikhari Charan Satpathi, Resident of village – Mahaloyee, Tahsil Gharghora, Distt. Raigarh and Chakradhar Nagar, Distt. Raigarh (C.G.)
- (ii) Naresh Chand Satpathi, son of Late Bhikhari Charan Satpathi, aged about 49 years, Resident of village – Mahaloyee, Tahsil Gharghora, Distt. Raigarh and Chakradhar Nagar, Distt. Raigarh (C.G.)
- (iii) Mahendra Kumar Satpathi, aged about 44 years, son of Late Bhilhari Charan Satpathi, Resident of village – Mahaloyee, Tahsil Gharghora, Distt. Raigarh and Chakradhar Nagar, Distt. Raigarh (C.G.)

---- Appellant/Plaintiff

Versus

- 1. Prithvi Singh, S/o. Jai Singh, aged about 60 years,
- 2. Laleshwar, son of Prithvi Singh, aged about 35 years,
- 3. Madan, son of Prithvi Singh, aged about 30 years,

All are agriculturist, resident of village Mahloyee, Tah. Gharghora, Distt. Raigarh (C.G.)

- 4. The State of Chhattisgarh, through – the District Collector, Raigarh (C.G.)

---- Respondents/defendants

For Appellant/Plaintiff	: Mr. A.N. Bhakta, Advocate
For Respondent No. 4/State	: Mr. Sanjeev Agrawal, PL.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

28/08/2019

- (1) Heard on the question of admission and formulation of substantial question of law on this second appeal preferred by plaintiff under Section 100 of the Code of Civil

Procedure, 1908.

(2) Shri A.N. Bhakta, learned counsel appearing for the appellant/plaintiff would submit that both the courts below have committed legal error in partly dismissing the suit by not granting the decree for possession with respect to the land encroached by the defendants and, therefore, the appeal involves substantial question of law for determination.

(3) I have heard learned counsel appearing for the parties and considered his submissions and went through the record with utmost circumspection.

(4) The appellant/plaintiff filed a suit for declaration of title, possession and eviction, which was partly decreed by the trial Court. Plaintiff has also claimed that defendants have encroached upon suit land bearing Khasra No. 101/1, area 0.077 hectare but both the courts below have clearly recorded a finding that plaintiff has failed to establish the extent of encroachment by the defendants as the plaintiff was required to establish the extent of encroachment upon the suit land by the defendants by seeking appointment of revenue commissioner, as such, there is no evidence regarding extent of encroachment by the defendants, therefore, both the courts below declined to grant decree in favour of plaintiff, which is neither perverse nor contrary to the record, rather it is based on material available on record and I do not find illegality or perversity in the judgment & decree impugned and no question of law much less substantial question of law is involved in this appeal.

(5) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed without notice to the other side.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

